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Vol. I.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. [redacted].32

MINNESOTA STATE LIBRARY.

GEORGE DESLIONS, W. C. PERRY, ADMINISTRATOR OF KATE M. PERRY, ET AL., PETITIONERS,

vs.

LA COMPAGNIE GENERALE TRANSATLANTIQUE, OWNER OF THE STEAMSHIP "LA BOURGOGNE."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED MAY 11, 1906.
CERTIORARI AND RETURN FILED AUGUST 2, 1906.

(20,253.)

(20,253.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 293.

GEORGE DESLIONS, W. C. PERRY, ADMINISTRATOR OF KATE M. PERRY, ET AL., PETITIONERS,

vs.

LA COMPAGNIE GENERALE TRANSATLANTIQUE, OWNER OF THE STEAMSHIP "LA BOURGOGNE."

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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District Court of the United States, 1

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE as owner of the Steamship "LA BOURGOGNE" for Limitation of Liability, 2
Petitioner-Appellee,

GEORGE DESLIONS, W. C. PERRY, as Administrator; PAULINE HENRY, as Administratrix; HENRY HYER KNOWLES, as Administrator; LOUIS DELFONTI, HENRY CIRRI and JOSEPHINE CHANUT,
Claimants-Appellants.

3

STATEMENT.

1900.

May 15. Filed petition for limitation of liability and other relief.

" 15. Filed and entered order for transfer and appointing Samuel H. Lyman, Esq., Trustee.

4 " 15. Filed and entered order for monition, injunction and reference to Thomas Alexander, Esq., to receive claims.
" 15. Monition issued.
Jul. 25. Filed affidavit and order to show cause why attachment should not issue against one Captain Fajolle.
Aug. 21. Filed monition and proof of due service by publication, also proof of due service of copy of monition and order therefor on all persons having suits pending.
" 21. Filed Commissioner's report on claims.
5 " 31. Filed answer Deslions and others.
Sep. 1. Filed answer William C. Perry as administrator, &c., and Pauline Henry, as administratrix, &c.
" 4. Filed answer Charles H. Rundell and others.
" 4. Filed answer Louis Delfonti & Enrico Cirri.
" 12. Filed answer H. H. Knowles, administratrix, &c.
" 20. Filed answer R. Gaillard.
Oct. 2. Filed exceptions to answer of G. Deslions and others.
6 " 2. Filed exceptions to answer of L. Delfonti and others.
" 8. Filed exceptions to answer and interrogatories of W. C. Perry, as administratrix, &c.
" 11. Filed answer by administrator, &c., of Blanch, Descott and Mabel Evans.
" 12. Filed answer C. Aubrey.
" 16. Filed and entered order on petitioner's objection to examination of Captain Santelli.

" 18. Filed affidavit and order to show cause why deposition of Captain Henderson should not be suppressed. Motion denied. Memo. Thomas, *J.* 7

" 19. Filed additional exceptions to interrogatories Deslions and others.

" 25. Filed affidavit and order to show cause why deposition of Henderson should not be suppressed.

Nov. 2. Filed cross interrogatories to O. H. Henderson.

" 3. Filed order overruling exceptions to interrogatories annexed to answer of Perry and others. 8

Dec. 10. Filed answer, J. M. Chanut.

1901.

Jan. 16. Filed affidavit and order to show cause why attachment should not issue against E. Fajolle for contempt. Vacated on witness' appearance to testify.

Mch. 15. Filed and entered order permitting petitioner to file unverified answers. Verified answers to be filed within thirty days *nunc pro tunc* as of this date.

" 15. Filed unverified answers to interrogatories of Deslions and others. 9

" 15. Filed and entered order permitting petitioner to file unverified answers to interrogatories of W. C. Perry and others. Verified answers to be filed within thirty days *nunc pro tunc* as of this date.

" 15. Filed unverified answers to interrogatories of W. C. Perry and others.

Apl. 16. Filed verified answers of petitioners to interrogatories annexed to answers of

10 George Deslions and others and W. C. Perry and others.

May 11. Filed affidavit and notice of motion to direct money to be paid to trustee. Memo. thereon.

.." 11. Filed affidavit and order to show cause why logs prior to July 4, 1898, should not be produced. Memo. thereon.

" 15. Filed and entered order directing the production of the logs of steamship *La Bourgogne*.

June 15. Filed and entered order for trial.

July 2. Filed and entered order setting case for
11 trial for first Tuesday of October, 1901.

Oct. 3. Filed and entered order sending case to Judge Thomas.

" 9. Filed order to show cause and order directing trial to be held before Townsend, *J.*

" 9. Case tried before Judge William K. Townsend.

" 10. Hearing resumed.

" 11. Hearing resumed.

" 11. Hearing adjourned to a date to be fixed by the Court.

12 1902.

Mch. 10. Final argument before Townsend, J.

" 10. Hearing closed.

" 22. Petition granted.

Opinion Townsend, *J.*

Apl. 1. Filed and entered interlocutory decree.

" 21. Filed objections to claims.

" 22. Filed objections to claims.

Jul. 15. Opinion, Thomas, *J., denying permission* to vacate the stay and permitting prosecution of cases in common law courts.

Sep. 25. Filed and entered order substituting Edward K. Jones, Esq., as proctor for

petitioner in the place of Messrs. Jones and Govin. 13

" 30. Filed notice of motion and order amending interlocutory decree of March 22d, 1902.

Oct. 4. Filed and entered order denying motions to vacate injunction and to allow Pauline Henuy and George Deslions to prosecute claims.

1903.

Nov. 2. Filed and entered order denying motion to reopen reference.

Dec. 3. Filed exceptions to order entered denying motion to reopen reference. 14

1904.

May 9. Filed Commissioner's report on claims with testimony and exhibits.

" 9. Filed exceptions to Commissioner's report (Benedict & Benedict).

" 13. Filed exceptions to Commissioner's report.

(E. K. Jones.)

June 25. Filed notices of motion to confirm Commissioner's report.

(A. Gordon Murray and Alexander & Colby.)

" 25. Commissioner's report confirmed. Memo. Thomas, *J.*

July 19. Filed order confirming Commissioner's report. 15

" 21. Filed notice of appeal, petition for appeal and allowance thereof.

" 21. Filed assignment of errors.

Aug. 1. Filed citation on appeal.

" 9. Filed notice of appeal.

(W. R. Page.)

" 17. Filed affidavit and order extending time to file record on appeal.

" 20. Filed notice of appeal Judson G. Wells.

Sep. 19. Filed affidavit and order extending time to file record on appeal.

16 DISTRICT COURT OF THE UNITED STATES,

SOUTERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
17 of liability and other relief.

TO THE HONORABLE ADDISON BROWN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The libel and petition of La Compagnie Generale Translantique, owner of the steamship *La Bourgogne*, in a cause of limitation of liability and other relief, civil and maritime, alleges as follows:

FIRST.—That the libellant is a corporation organized and existing under the laws of the Republic
18 of France, and was at the times hereinafter mentioned sole owner of the steamship *La Bourgogne*, her engines, boilers, tackle, apparel and furniture, and all the appurtenances thereto.

SECOND.—That the said steamship *La Bourgogne* was, until her loss as hereinafter stated, one of a line of steamships owned and operated by this libellant and petitioner, and plying between the Port of Havre, in the Republic of France, and the Port of New York, in the United States of America.

THIRD.—That on Saturday, the 2d day of July, 19
1898, the said steamship *La Bourgogne* departed from the Port of New York with a large cargo of merchandise and a number of first, second and third class passengers bound on one of her regular voyages to Havre, France.

FOURTH.—That after leaving the said Port of New York, as aforesaid, the said steamship *La Bourgogne* proceeded to sea and progressed upon her voyage without notable incident or mishap until she reached a point in the Atlantic Ocean from sixty to one hundred miles off the coast of Sable Island on the morning of July 4th, 1898. At 20
that time a dense fog was prevailing, and the said steamship was proceeding at a reduced and moderate rate of speed under slowed engines, and was sounding her fog whistle at the intervals required by law. Her master and a full corps of officers were on the bridge, and a full complement of petty officers and seamen were on duty on deck, including two lookouts stationed forward at the bow and a man at the crow's nest on the forward mast; and all of them were duly attentive to their respective duties. In this condition of things, and at about half-past five o'clock in the morning of the said day, a large ship, which afterwards turned out to
be the British ship *Cromartyshire*, suddenly loomed 21
up on the starboard side of *La Bourgogne* under a full, nor nearly full, head of sail and proceeding at a high rate of speed, and, without any previous warning of her presence, except by a single blast of a fog horn sounded but a moment before the collision, dashed suddenly into starboard side of *La Bourgogne*, piercing and cutting her plates and penetrating deeply into the side of the said steamer from her decks to below the water-line, and opening a wide aperture through which the sea rushed with

22 great and overwhelming power, so that the hold and engine room of *La Bourgogne* soon filled with water, which caused her to list heavily to starboard. The fog was so dense that the officers and men of *La Bourgogne* soon lost sight of the *Cromartyshire,* and realizing the serious nature of the *Bourgogne's* injuries, brought her to a full standstill and signalled to the *Cromartyshire* for assistance. To this signal the *Cromartyshire* paid no heed and failed to perform her duty to stand by and render assistance to *La Bourgogne.* The wound in the side of *La Bourgogne* was such that it was soon apparent that she was in danger of
23 foundering, and the master and crew then engaged themselves in lowering the boats and life rafts to save the passengers, but before any considerable progress could be made, the said steamer foundered and sank, in which disaster her master, all her officers and many of her seamen, as well as several hundred passengers, were drowned, and the said steamship, her engines, boilers, tackle, apparel and furniture and all her appurtenances, together with her cargo and pending freight, thereupon became a total loss, except that one life boat and one life raft of the apparel or equipment of the said steamship, and of the value of about one hundred dollars, were saved after the said disaster and brought to
24 the Port of New York, and that the same are now in the jurisdiction of this Honorable Court.

FIFTH.—That the said collision was in no wise caused by the fault or negligence of the said *La Bourgogne,* or her officers and men in charge of her navigation, but was caused solely by the fault and negligence of the said ship *Cromartyshire,* in the following particulars:

(1.) In that the said ship *Cromartyshire* was proceeding at a high and dangerous rate of speed, and

with a full, or nearly full, head of sail in a dense fog; 25

(2.) That the said ship *Cromartyshire* was not provided with an efficient fog horn;

(3.) That the said ship *Cromartyshire* did not sound the fog horn with which she was provided, in the manner prescribed by law;

(4.) That the said ship *Cromartyshire* did not have a sufficient lookout, and that she was otherwise shorthanded in officers and men charged with her navigation;

(5.) That the ship *Cromartyshire*, when her officers and men learned of the presence of *La Bourgogne*, and of the danger and imminency of the collision, did nothing whatever to avoid the same; 26

(6.) That the said ship *Cromartyshire* failed to stand by and render assistance to *La Bourgogne*; and

(7.) That the ship *Cromartyshire* was otherwise in fault in particulars to be shown upon the hearing of this libel and petition.

SIXTH.—That the loss, damage and injury caused by the said collision were without the privity or knowledge of the petitioner, as well as without fault or negligence on the part of those in charge of the navigation of *La Bourgogne*, as aforesaid. 27

SEVENTH.—That certain persons have made claims against the petitioner for losses arising out of the said collision, and numerous actions at law and suits in admiralty have been brought against the petitioner in this and other judicial districts of the United States and also in the courts of England and France, which actions, suits and claims with the amounts thereof, as far as known to the peti-

tioner, and the several courts in which such actions and suits for the same have been brought, are as follows, viz.:

ACTIONS AT LAW.

(1.) Adrien Reymond, as administrator of the goods, chattels and credits of Adele Reymond, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000

(2.) Henry Wuertz, as administrator of the goods, chattels and credits of Emile H. Wuertz, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000

(3.) Charles Mayer, as administrator of the goods, chattels and credits of Henry Mayer, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000 31 32

(4.) Pauline Henny, as administratrix of the goods, chattels and credits of Juliette Cicot, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Supreme Court of the State of New York, in the County of New York; Gayley & Fleming, attorneys for plaintiff, No. 52 Wall Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $50,000 33

(5.) Catarina Casazza, as administratrix of the goods, chattels and credits of Rose Casazza, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subse-

quently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000

(6.) Charles Casazza, as administrator of the goods, chattels and credits of Giocomo Casazza, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000

(7.) Patrick McKeown against La Compagnie Generale Transatlantique, for personal injuries and loss of baggage, etc., originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; John W. Brainsby, attorney for plaintiff, No. 287 Broadway, New York City;

Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $10,000 37

(8.) Catarina Casazza, as administratrix of the goods, chattels and credits of Luigi Casazza, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $30,000 38

(9.) Victorine Labret, as administratrix of the goods, chattels and credits of Louis Labret, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Whitehead, Dexter, Osborn and Gillespie, attorneys for plaintiff, No. 71 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $50,000 39

40 (10.) Antonino Carlo against La Compagnie Generale Transatlantique, for personal injuries and loss of baggage, originally brought in the Supreme Court of the State of New York, in the County of Kings, and subsequently removed into the the Circuit Court of the United States for the Eastern District of New York; Achille J. Oishei, attorney for plaintiff, No. 302 Broadway, New York City; Jones & Govin, attorneys for defendant, 41 No. 45 Cedar Street, New York City. Amount claimed $2,718.35

(11.) Fredericka Luster, as administratrix of the goods, chattels and credits of Simon Koppe, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Circuit Court of the United States for the Southern District of New York; George Sanders and Edmund W. Powers, attorneys for plaintiff, No. 220 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 42 Cedar Street, New York City. Amount claimed $50,000

(12.) George Deslions against La Compagnie Generale Transatlantique, for loss of lives of deceased wife and child and his own personal property, brought in the Circuit Court of the United States for the District of New York; Benedict & Benedict, attorneys for plaintiff, No. 68 Wall Street, New York City;

Jones & Govin, attorneys for defendant, No. 45 Celar Street, New York City. Amount claimed..... $75,000 43

(13.) Alice B. Evans and Harry S. Jones, as administrators of the goods, chattels and credits of De Scott Evans, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Supreme Court of the State of New York, in the County of New York; G. T. Goldthwaite, attorney for plaintiffs, No. 141 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $50,000 44

(14.) Luighi Bonughi, as administrator of the goods, chattels and credits of Umberto Bonughi, deceased, against La Compagnie Generale Transatlantique, impleaded with another, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York; Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $30,000 45

(15.) Josephine M. Chanut, as executrix under the last will and testament of Jean M. Chanut, deceased,

46 against La Compagnie Generale Transatlantique, brought in the Supreme Court of the State of New York, in the County of Westchester; Judson G. Wells, attorney for plaintiff, No. 10 East 14th Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount of claim..... Not stated

(16.) Annazetta Stratton, as administratrix of the goods, chattels and credits of Catherine Elizabeth McFarland, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of Kings, and subsequently removed into the Circuit Court of the United States for the Eastern District of New York; Stake & Eckerson, attorneys for plaintiff, No. 85 Liberty Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $20,000

47

48 (17.) Louise Gachot, as administratrix of the goods, chattels and credits of Caroline Kiehl, deceased, against La Compagnie Generale Transatlantique, for loss of life, originally brought in the Supreme Court of the State of New York, in the County of New York, and subsequently removed into the Circuit Court of the United States for the Southern District of New York;

Kenneson, Crain & Alling, attorneys for plaintiff, Nos. 11-13 William Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $30,000 49

(18.) Widow Réné Gaillard, Tutrix, etc., against La Compagnie Generale Transatlantique, for loss of life, brought in the Circuit Court of the United States for the Eastern District of Louisiana; E. A. O'Sullivan, attorney for plaintiff, New Orleans, La.; Denegre, Blair & Denegre, attorneys for defendant, Denegre Building, New Orleans, La. Amount claimed $30,000 50

(19.) Resal against La Compagnie Generale Transatlantique, for loss of life, brought in the Civil Tribunal of the Seine (First Chamber), Paris, France. Amount claimed .. fr. 200,000

(20.) Anna Melagrano against La Compagnie Generale Transatlantique, for loss of life, brought in the Court of Common Pleas, in the City of Philadelphia, Pa.; L. L. Eyre, attorney for plaintiff, Philadelphia, Pa.; Henry R. Edmunds, attorney for defendant, No. 425 Walnut Street, Philadelphia, Pa. Amount claimed $20,000 51

(21.) Margaret Barrett against La Compagnie Generale Transatlantique, for loss of personal effects, brought in the Court of Common Pleas, in the City of Philadelphia, Pa.; A. S. L. Shields, attorney for

52 plaintiff, Philadelphia, Pa.; Henry R. Edmunds, attorney for defendant, No. 425 Walnut Street, Philadelphia, Pa. Amount of claim.... Not stated

(22.) Margaret Barrett, as administratrix of Peter Barrett, deceased, for loss of life, originally brought in the Court of Common Pleas, in the City of Philadelphia, Pa., and subsequently removed into the Circuit Court of the United States for the Eastern District of Pennsylvania; A. S. L. Shields, attorney for plaintiff, Philadelphia, Pa.; Henry R. Edmunds, attorney for defendant, No. 425 Walnut Street, Philadelphia, Pa. Amount claimed.... $20,000

53

(23.) James Marshall, administrator of the estate of Edith Marshall, deceased, against La Compagnie Generale Transatlantique, for loss of life and loss of baggage, originally brought in the Circuit Court of Cook County, Illinois, and subsequently removed into the Circuit Court of the United States for the Northern District of Illinois; J. Warren Pease and William Polkey, attorneys for plaintiff, Chicago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed..... $7,500

54

(24.) James Marshall, against La Compagnie Generale Transatlantique, for loss of baggage, brought in the Superior Court, Cook County, Illinois; J. Warren Pease and William Polkey, attorneys for plaintiff, Chi-

cago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed..... $2,500 55

(25.) Adrian Hummel against La Compagnie Generale Transatlantique, for loss of lives of deceased wife and two children, brought in the Circuit Court of the United States for the Southern District of New York; Benedict & Benedict, attorneys for plaintiff, No. 68 Wall Street, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $50,000 56

(26.) Clorinda Alpi, as administratrix of the goods, chattels and credits of Joseph Alpi, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Circuit Court of the United States for the Southern District of New York; Townsend & Mann, attorneys for plaintiff, No. 309 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $50,000 57

(27.) Lucia Thionnet, as administratrix of the goods, chattels and credits late of Celestine Thionnet, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Circuit Court of the United States for the Southern District of New York; Wilber & Ludlow, attorneys for plaintiff, Nos. 61-65 Park Row, New York City;

58 Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed..... $25,000

(28.) Charles Aubry against La Compagnie Generale Transatlantique, brought in the Supreme Court of the State of New York, in the County of Queens (Action No. 1); G. J. Wiederhold, attorney for plaintiff, No. 1367 Broadway, Borough of Brooklyn; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City.

59 Nature of claim and amount claimed ..... Not stated

(29.) Charles Aubry against La Compagnie Generale Transatlantique, brought in the Supreme Court of the State of New York, in the County of Queens (Action No. 2); G. J. Wiederhold, attorney for plaintiff, No. 1367 Broadway, Borough of Brooklyn; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Nature of claim and amount claimed ..... Not stated

60 (30.) Charles Aubry against La Compagnie Generale Transatlantique, brought in the Supreme Court of the State of New York, in the County of Queens (Action No. 3); G. J. Wiederhold, attorney for plaintiff, No. 1367 Broadway, Borough of Brooklyn; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Nature of claim and amount claimed ..... Not stated

(31.) Arthur E. White, as executor of the last will and testament of Joseph H. Durkee, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the Supreme Court of the State of New York, in the County of New York; William R. Pake, attorney for plaintiff, No. 257 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount claimed $100,000 61

(32.) W. C. Perry, administrator of the estate of Kate M. Perry, deceased, against La Compagnie Generale Transatlantique, for loss of baggage and personal property, brought in the Circuit Court of the United States for the Northern District of Illinois; Messrs. Hamline, Scott & Lord, attorneys for plaintiff, Chicago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed.... $5,400 62

(33.) W. C. Perry, Administrator of the Estate of Sadie Perry, deceased, against La Compagnie Generale Transatlantique, for loss of baggage and personal property, brought in the Circuit Court of Cook County, Illinois; Hamline, Scott & Lord, attorneys for plaintiff, Chicago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed... $1,200 63

(34.) W. C. Perry, administrator of the estate of Florence Perry, deceased,

64 against La Compagnie Generale Transatlantique, for loss of baggage and personal property, brought in the Circuit Court of Cook County, Illinois; Hamline, Scott & Lord, attorneys for plaintiff, Chicago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed... $1,200

(35.) John Perry, against La Compagnie Generale Transatlantique, for loss of baggage and personal property carried by plaintiff's
65 minor children, brought in the Circuit Court of Cook County, Illinois; Messrs. Hamline, Scott & Lord, attorneys for plaintiff, Chicago, Ills.; Isham, Lincoln & Beale, attorneys for defendant, Chicago, Ills. Amount claimed $800

(36.) Clorinda Alpi, as administratrix of the goods, chattels and credits of John Alpi, deceased, against La Compagnie Generale Transatlantique, brought in the Circuit Court of the United States for the Southern District of New York; Town-
66 send & Mann, attorneys for plaintiff, No. 309 Broadway, New York City; Jones & Govin, attorneys for defendant, No. 45 Cedar Street, New York City. Amount and nature of claim..... Not stated

SUITS OF ADMIRALTY.

(37.) Charles L. Rundell, administrator with the will annexed of Edwin R. Rundell, deceased, against La

Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed..... $50,000 67

(38.) Edwin S. Osgood, administrator of the estate of Edwin H. Osgood, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed $50,000 68

(39.) Edwin S. Osgood, executor of the estate of Lizzie A. Osgood, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed... $50,000 69

(40.) Kittie A. Truax, administratrix of the estate of Hattie M. Tower, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the

Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Illinois; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed $50,000

(41.) Theresa del Angelica, executrix of the estate of Cherubino del Angelica, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Monroe, proctors for libellant, Chicago, Illinois; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed..... $50,000

(42.) Charles H. Williams, administrator of the estate of Ralph L. Williams, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed..... $50,000

(43.) Ernest C. Cook, administrator of the estate of Clara Belle Cook, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the North-

ern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Illinois; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed. $50,000 73

(44.) Harold O. Crane, executor of the estate of Edward L. Walter, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Illinois; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed $50,000 74

(45.) Ernest V. Crumb, administrator of the estate of L. Rundell, deceased, against La Compagnie Generale Transatlantique, for loss of life, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Illinois; Isham, Lincoln & Beale, proctors for respondent, LaSalle and Monroe Streets, Chicago, Illinois. Amount claimed. $50,000 75

(46.) Thomas Law & Company, owners of the ship *Cromartyshire*, against La Compagnie Generale Transatlantique, for damages to vessel, brought in the High Court of Justice of England, Probate, Divorce and Admiralty Division; Lowless &

76 Co., plaintiff's solicitors, London, England; Ince, Colt & Ince, defendant's solicitors, London, England. Amount claimed..... £8,384

(47.) Enrico Cirre against La Compagnie Generale Transatlantique, for personal injuries, brought in the District Court of the United States for the Southern District of New York; Bullowa & Bullowa, proctors for libellant, No. 31 Nassau Street, New York City; Jones & Govin, proctors for respondent, No. 45
77 Cedar Street, New York City. Amount claimed..... $10,000

(48.) Louis Del Fonti against La Compagnie Generale Transatlantique, for personal injuries, brought in the District Court of the United States for the Southern District of New York; Bullowa & Bullowa, proctors for libellant, No. 31 Nassau Street, New York City; Jones & Govin, proctors for respondent, No. 45 Cedar Street, New York City. Amount claimed. $10,000

78 (49.) Kuhl Elkauri, administrator of the estate of S. George Francis, deceased, against La Compagnie Generale Transatlantique, for loss of life and loss of personal property, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed..... $55,000

(50.) Murah Kalife, administrator of the estate of Joseph Kalife, deceased, against La Compagnie Generale Transatlantique, for loss of life and loss of personal property, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ill. Amount claimed..... $55,000 79

(51.) Reinhard Luttenauer, administrator of the estate of Emile Luttenauer, deceased, aginst La Compagnie Generale Transatlantique, for loss of life and loss of personal property, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed $55,000 80

(52.) Kuhl Elkauri against La Compagnie Generale Transatlantique, for loss of life and loss of personal property, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed. $55,000 81

(53.) Antonio Mastalia, administrator of the estate of Bartolo Mastalia, deceased, against La Compagnie

82 Generale Transatlantique, for loss of life and loss of personal property, brought in the District Court of the United States for the Northern District of Illinois; McClelland & Munroe, proctors for libellant, Chicago, Ills.; Isham, Lincoln & Beale, proctors for respondent, Chicago, Ills. Amount claimed... $55,000

CLAIMS.

(54.) Matteo Zurich, residence unknown. Claim for loss of his per-
83 sonal property. Amount claimed.. $470

(55.) Franz Klement, residence unknown. Claim for damages for loss of baggage, etc. Amount claimed. $450

(56.) Lucia Chionnet, residence unknown. Claim for damages for loss of baggage, etc. Amount claimed $950

(57.) Lucien Terlaud, residing at No. 70 West 39th Street, New York City. Claim for loss of personal effects. Amount claimed..... $284

(58.) Pauline S. Gini, residence un-
84 known. Claim for damages for loss of life of her husband, Christopher Gini. Amount of claim..... Not stated

(59.) Louis Gallino, residing at Boston, Mass. Claim for damages for loss of life of Pietro Gallino. Amount of claim..... Not stated

(60.) James R. Murphy, residing at No. 27 School Street, Boston, Mass. claim for damages for loss of life of Louis Cunio. Amount of claim.... Not stated

(61.) Helene C. Kenney, residence unknown. Claim for damages for loss of life of Mr. and Mrs. Tacot, and for loss of their personal effects. Amount of claim..... Not stated 85

(62.) Helena C. Wright, widow of Thomas Wright, deceased, residing at Toronto, Canada. Claim for damages for loss of life of her husband. Amount of claim..... Not stated

(63.) Martha R. Vacher, widow of Jerome Vacher, deceased, residing at No. 666 East 29th Street, Paterson, N. J. Claim for damages for loss of life of her husband. Amount of claim..... Not stated 86

(64.) J. B. Austin, as executor of Walter B. Clark, deceased, residence unknown. Claim for damages for loss of life of Walter B. Clark. Amount of claim..... Not stated

(65.) Anna Graf, as administratrix of Adolf Graf, deceased, residence unknown. Claim for damages for loss of life of Adolf Graf. Amount of claim..... Not stated

(66.) Johanna H. Van Tongelen, residence unknown. Claim for damages for loss of life of Caroline Janssen. Amount of claim..... Not stated 87

(67.) Jeanne Laurichesse, residence unknown. Claim for damages for loss life of Gabrielle Carriere. Amount of claim..... Not stated

(68.) Joe Messina, residing at Vicksburg, Miss. Claim for damages for loss of life of Nick Di Rago, and for loss of his personal property. Amount of claim..... Not stated

88 (69.) Read, as administrator of the estate of Mrs. M. H. Arrouet, deceased, residing at No. 20 Devonshire Street, Boston, Mass. Claim for damages for loss of life. Amount of claim..... Not stated

(70). Read, as administrator of the estate of Emma Mader, deceased, residing at No. 20 Devonshire Street, Boston, Mass. Claim for damages for loss of life. Amount of claim..... Not stated

(71.) Joseph Jantzen, as administrator of Matilda C. Schultz, deceased,
89 residence unknown. Claim for damages for loss of life and loss of personal effects. Amount of claim. Not stated

(72.) Mrs. Fimbel, residing at No. 359 Marshall Street; Paterson, N. J. Claim for damages for loss of life of Rosina Bobet. Amount of claim Not stated

(73.) Mrs. Guiseppe Cesare, residing at Butte, Montana. Claim for damages for loss of life of Guiseppe Cesare. Amount of claim..... Not stated

Also for loss of deceased's money. Amount claimed to have been lost.. $1,000

90 (74.) Estate of Evelyn Reeves, deceased, residence unknown. Claim for loss of decedent's baggage. Amount of claim..... $750

(75.) Eugene Bournonville, residence unknown. Claim for loss of life of his sister. Amount of claim..... Not stated

(76.) Josephine Forni, residence unknown. Claim for loss of life of her husband. Amount of claim... Not stated

EIGHTH.—That by reason of the loss of the said steamship *La Bourgogne* and her cargo and pending freight, the liability of the petitioner and the amount or value of the petitioner's interest in such vessel and her pending freight and of its interest as owner of such vessel and her pending freight is and amounts to nothing, except the value of the life boat and life raft hereinbefore mentioned which, as your petitioner alleges, is of the value of about one hundred dollars, as aforesaid. 91

NINTH.—That the petitioner desires to claim the benefit of the several provisions of the Revised Statutes of the United States and the acts amendatory thereof and supplementary thereto relating to limited liability of shipowners, and in this proceeding, by reason of the facts heretofore set forth, to contest its liability and the liability of the said steamship *La Bourgogne* to any extent whatever for any and all loss, destruction, damage or injury done, occasioned or incurred by reason of the above-mentioned collision, and to that end desires to surrender its interest in the said vessel and her pending freight as provided by law, or that the Court may appoint appraisers of the interest of the petitioner in the said steamship and her pending freight, if for any reason the same may be necessary in view of the foregoing allegations. 92 93

TENTH.—That all and singular the premises are true and within the admiralty and maritime jurisdiction of this Honorable Court.

Wherefore, the petitioner prays that this Court will, if it shall deem it necessary and proper, make an order on such terms as will be just to the petitioner and to all persons having claims upon the petitioner and of the said steamship *La Bourgogne*, appointing a trustee to whom your petitioner may transfer its interest in the said steamship *La*

94 *Bourgogne* and her pending freight, or an order to appraise the value of the petitioner's interest in the said steamship *La Bourgogne* and her pending freight, pursuant to the laws of the United States and the rules and practice in such case made and provided, and that the Court will also appoint a commissioner to receive proof of claims, or otherwise determine the same in accordance with the rules and practice of this Court, and will issue a monition to all persons claiming damages by reason of any loss, damage or injury done, occasioned or incurred by reason of the said collision above mentioned, citing them to appear before said commis-
95 sioner at or before a time to be named in said writ and make proof of their respective claims, or otherwise order the trial and determination thereof as may be proper and expedient; and that this Court will also issue its injunction restraining the prosecution of any and all actions, suits or legal proceedings of any kind arising out of the said collision against the petitioner other than in the present proceeding in any court within the United States and that in respect of any action or suit in any court not within the said United States that this Court do issue its request to such court to proceed no further therein; and that the Court will adjudge that the petitioner is not liable for any demands or
96 claims whatsoever in consequence of the said collision, or if such liability shall be established, then that the petitioner be discharged therefrom; and that the petitioner may have such other or further relief in the premises as may be just.

JONES & GOVIN,
Proctors for Libellant and
Petitioner,
Office and Post Office Address,
No. 45 Cedar Street,
New York City,
EDWARD K. JONES, N. Y.
Advocate.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

97

EUGENE DE BOCANDE, being duly sworn, deposes and says: That he is the General Agent for the United States and Canada of the above named petitioner, La Compagnie Generale Transatlantique; that the foregoing petition is true to the best of deponent's knowledge, information and belief; and that the reason why this verification is not made by an officer of the Company is that no officer thereof is within the Southern District of New York.

EUG. DE BOCANDE.

Sworn to before me this 5th day of May, 1900.

98

FREDERICK KOPF,
[SEAL.] Notary Public (56),
N. Y. Co.

(Endorsed)—Libel and petition for limitation of liability and other relief.—Filed May 15, 1900.

99

100 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
101 of liability.

On reading and filing the libel and petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, her engines, boilers, etc., verified May 15, 1900, showing that the said libellant and petitioner has been sued as such owner by various persons claiming damages for loss and injury alleged to have been caused to them by the collision between the said steamship *La Bourgogne* and the ship *Cromartyshire* on the high seas, in which collision the said steamship *La Bourgogne*
102 was sunk and together with her pending freight became a total loss, and that such loss, damage or injury was done, occasioned and incurred without the design, neglect, privity or knowledge of such owner, and that the said petitioner desires to claim the benefit of limitation of liability provided by the laws of the United States, and also to contest its liability and the liability of said vessel for said loss, destruction, damage and injury, independently of the limitation of liability claimed under said laws of the United States, and the said libel and petition also stating the facts and circumstances on which

such limitation of liability is claimed, and praying proper relief in the premises in that behalf, and the said owner having elected to make a transfer of its interest in said vessel and freight as hereinafter provided: 103

It is hereby ordered, in conformity with the said laws of the United States and the rules of the Supreme Court of the United States made in pursuance thereof, that the said libellant and petitioner, La Compagnie Generale Transatlantique, transfer its interest in the said steamship *La Bourgogne* and her pending freight for the said voyage, for the benefit of all claimants to Samuel H. Lyman, Esq., of the City of New York, who is hereby appointed, 104 pursuant to the provisions of the laws of the United States in such case made and provided, to act as trustee for all persons who prove to be legally entitled thereto.

Dated New York, May 15th, 1900.

ADDISON BROWN.
U. S. D. J.

(Endorsed)—Order directing transfer and appointing trustee.—Filed May 15, 1900.

105

106 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
107 of liability.

Whereas the above named, La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, her engines, boilers, etc., has heretofore on this day presented its libel and petition to the District Court of the United States for the Southern District of New York, claiming for the reasons and because of the circumstances therein mentioned and set forth the benefit of limitation of liability of said libellant and petitioner pursuant to the laws of the United States, and praying
108 that the said Court should appoint a trustee pursuant to the said laws of the United States and make an order for the transfer by the said libellant and petitioner of its interest in the said steamship *La Bourgogne* and freight for the benefit of all persons who may appear as claimants against the said libellant and petitioner because of the collision and subsequent loss of the said steamship *La Bourgogne* as in said libel and petition stated;

And whereas, upon the libel and petition aforesaid an order has been heretofore made in the

above-entitled proceeding, directing the said libellant and petitioner, La Compagnie Generale Transatlantique, to transfer its interest in the said steamship *La Bourgogne* and her freight for the voyage mentioned in the said libel and petition to Samuel H. Lyman, Esq., of the City of New York, appointed in and by the said order trustee for the benefit of any person or persons who may have claims against the said libellant and petitioner by reason of the collision and loss of the said steamship *La Bourgogne* as in the said libel and petition set forth; 109

Now, therefore, this indenture witnesseth that the said La Compagnie Generale Transatlantique, in obedience to the said order and in consideration of the premises aforesaid, has conveyed, assigned, transferred and delivered over, and by these presents does convey, assign, transfer and deliver over to the said Samuel H. Lyman, trustee as aforesaid, all and singular the interest of the said petitioner in the said steamship *La Bourgogne*, her engines, tackle, apparel and furniture and in the freight of the said steamship for the voyage in which the said steamship was lost as aforesaid; 110

To have and to hold the same unto the said Samuel H. Lyman, Esq., as such trustee as aforesaid and to his successors and assigns, subject to the order, control and direction of the District Court of the United States for the Southern District of New York. 111

In witness whereof, the said La Compagnie Generale Transatlantique has caused these presents to be signed by its General Agent for the United States and Canada, having full authority in the premises, this 15th day of May in the year of our Lord one thousand and nine hundred.

COMPAGNIE GENERALE TRANSATLANTIQUE,

EUG. DE BOCANDE,

[SEAL.] General Agent for U. S. and Canada.

monition shall be made, subject to the right of any
118 party to question or controvert the same. And it is

Further ordered, that public notice of such monition be given by publication thereof in *New York Tribune,* a newspaper published in the City of New York, once a day for fourteen (14) days and thereafter once a week until the return day of said monition, the first publication to be at least three months before said return day, and that a copy of said monition be served on the proctors or attorneys of all persons who at the time of making this order have filed libels or commenced actions or suits for damages or loss arising out of the collision aforesaid, said last mentioned service to be made at
119 least thirty days before said return day. And it is

Further ordered, that the further prosecution of each and every of the actions and suits mentioned and set forth in the said libel and petition, and the prosecution of any and all other suits, actions or proceedings of any nature or description against the said La Compagnie Generale Transatlantique, or of the said steamship *La Bourgogne,* her engines, etc., in respect of any claim or claims aforesaid, be, and the same are, hereby enjoined and restrained until the hearing and determination of these proceedings. And it is

120 Further ordered, that service of this order as a restraining order be made within this District by the United States Marshal in the usual manner, and in any other District by the United States Marshal for such District, by delivering a certified copy of this order to the person or persons to be restrained, or to their respective attorney or attorneys, proctor or proctors, in all cases where action, libel or other legal proceeding shall have been brought or commenced, and in like manner in all cases where such

action, libel or other legal proceeding may be here- 121
after brought or commenced.

Dated New York, May 15th, 1900.

ADDISON BROWN,
U. S. D. J.

(Endorsed)—Order for Monition, Reference to Commissioner and Injunction.—Filed May 15, 1900.

THE PRESIDENT OF THE UNITED STATES OF AMERICA,
TO THE MARSHAL OF THE SOUTHERN DISTRICT
OF NEW YORK, GREETING: 122

Whereas, a libel and petition has been filed in the District Court of the United States for the Southern District of New York on the 15th day of May, 1900, by La Compagnie Generale Transatlantique, as owner of the steamship *La Bourgogne*, praying for a limitation of its liability for the loss, damage or injury caused by the collision between the said steamship *La Bourgogne* and the British ship *Cromartyshire*, on the 4th day of July, 1898, for the reasons and causes in said libel and petition mentioned, and praying that a monition of the said Court in that behalf may be issued, and that all persons claiming damages for any such loss, dam- 123
age or injury may thereby be cited to appear before the said Court and make due proof of their respective claims, and all proceedings being had, that if it shall appear that the said petitioner is not liable for any such loss, damage or injury, it may be so finally decreed by the Court; and

Whereas, the said petitioner has duly surrendered its interest in the said steamship *La Bourgogne* and her pending freight to a trustee duly appointed pursuant to the order of the said Court;

You are therefore commanded to cite all persons

124 claiming damages for any such loss, damage or injury occasioned by said collision, to appear before said Court and make due proof of their respective claims before Thomas Alexander, Esq., a Commissioner of the said United States District Court, at his office in the U. S. Court House and Post Office Building, in the Borough of Manhattan, City of New York, at or before the 21st day of August, 1900, at 11 o'clock in the forenoon, and you are also commanded to cite such claimants to appear and answer the allegations of the libel and petition herein on or before the said last-named date, or within such further time as this Court may grant,
125 and to have and receive such relief as may be due.

And what you have done in the premises do you then make return to this Court, together with this writ.

Witness, the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York, at the City of New York, his 15th day of May, in the year of our Lord nineteen hundred, and of the independence of the United States the one hundred and twenty-fourth.

SAM'L H. LYMAN,
Clerk.

126 (Endorsed)—Monition.—Filed Aug. 21, 1900.

I do hereby certify that in obedience to the within monition I have cited all persons claiming damages for any and all loss, destruction, damages or injury caused by or resulting from the collision herein referred to, to be and appear before this Court as herein required by publication of notice in the *New York Tribune*, a newspaper published in the City of New York, as required by the within monition and annexed order and as appears by proof of publication hereto annexed.

I do further certify that on the 19th day of July, 1900, at the City of New York, in my district, I served the within monition and annexed order upon R. A. Learned as manager for the firm of Wilber & Ludlow, proctors for claimant Lucia Thionnet, administratrix for Celestine Thionnet, by exhibiting to him the within originals and at the same time leaving with him a copy of each thereof. 127

Dated New York, August 21st, 1900.

WILLIAM HENKEL,
U. S. Marshal, S. D., N. Y.

U. S. DISTRICT COURT, 128

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability. 129

TO THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN, THE CLAIM OF GEORGE DES LIONS ALLEGES AS FOLLOWS:

FOR A FIRST CAUSE OF ACTION.

FIRST.—That he is a citizen of the United States and a resident of the City of New York.

SECOND.—That the above-named petitioner is a corporation organized under the laws of France,

130 and the steamship *La Bourgogne* was a French vessel belonging to the petitioner.

THIRD.—That on or about the 2nd day of July, 1898, claimant's wife and child took passage at New York on the steamship *La Bourgogne* under a contract with petitioner to be safely transported from the City of New York to the City of Havre, France. That while on said voyage the said steamship *La Bourgogne,* through no fault of this claimant, but by reason of the fault of the above-named petitioner, and its agents and servants, came into collision on the 4th of July, 1898, with the British
131 ship *Cromartyshire,* by reason of which collision *La Bourgogne* was sunk and claimant's said wife and child lost their lives.

FOURTH.—That by the laws of France every act which causes damage to another obliges him who has caused the damage to repair it, and every one is responsible for damage which has been caused not only by his own fault, but also by his own negligence or imprudence, or by that of his agents and servants.

FIFTH.—That by reason of the premises this
132 claimant has been damaged in the sum of fifty thousand dollars.

FOR A SECOND CAUSE OF DAMAGE.

SIXTH.—That on the 2nd day of July, 1898, claimant shipped on board of petitioner's steamship *La Bourgogne* a quantity of personal property worth upwards of fifty thousand dollars, under an agreement with petitioner for a valid consideration received, that the same should be safely transported on said steamship to Havre, France, and there delivered to claimant or his agents. That

the said property was totally lost in the collision hereinbefore mentioned and has never been delivered according to agreement at Havre. 133

Wherefore claimant hereby makes and files his claim against the above-named petitioner for the sum of one hundred thousand dollars, and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant, and should be allowed to him out of any fund deposited in the registry of the Court in this proceeding.

BENEDICT & BENEDICT,
Proctors for Claimant,
68 Wall Street, 134
New York.

Southern District of New York, ss:

GEORGE DES LIONS, being duly sworn, says that the above claim is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

G. DES LIONS.

Sworn to before me this 20th
day of July, 1900.

WM. D. JONES,
U. S. Comr., 135
S. D. of N. Y.

(Endorsed)—Claim of George Des Lions.—Recd. July 20, 1900.

136 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
137 of liability and other relief.

TO THE HONORABLE ADDISON BROWN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THOMAS ALEXANDER, ESQ., THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of W. C. Perry, administrator of the estate of Kate M. Perry, deceased, alleges as follows:

FIRST.—That he is a citizen of the United States
138 and resides in the City of Kansas City, in the State of Missouri.

SECOND.—That the above-named petitioner is a corporation organized and existing under the laws of the Republic of France, and the steamship *La Bourgogne* was a French vessel and was owned by the petitioner herein, said petitioner being a common carrier of goods and passengers for hire.

THIRD.—That letters of administration on the estate of Kate M. Perry, deceased, were duly

granted to this claimant by the Probate Court of 139
Jackson County, State of Missouri, under which he duly qualified and now is qualified to act; that said Kate M. Perry, deceased, lost her life and baggage and valuables upon petitioner's steamship *La Bourgogne* at sea on the fourth day of July, 1898; that said deceased took passage on said steamship on the 2nd day of July, 1898, at the City and Port of New York, under a contract for a valuable consideration made with this petitioner for the safe transportation of her person and personal effects from New York to Havre, that while on said voyage the said steamship *La Bourgogne*, through no fault of this claimant's intestate, but wholly by 140
reason of the faults and negligence of the above-named petitioner, its agents and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the claimant's intestate lost her life and property on said vessel.

FOURTH.—That claimant's intestate had baggage and valuables with her on said voyage, as claimant is informed and believes, to the amount of fifty-four hundred dollars ($5,400), to wit: certain trunks, boxes, valises, clothing, jewelry and money, and other personal effects. Said baggage and property 141
was totally destroyed and lost in the collision by reason of the aforesaid negligence of this petitioner and no part of it has ever been delivered; that this claimant on or about the 20th day of March, 1900, caused to be brought in his name as plaintiff with this petitioner as defendant a suit at law in the United States Circuit Court for the Northern District of Illinois, to recover the amount of damages aforesaid, which suit is now stayed by reason of the within proceeding.

Wherefore claimant makes and files this his claim

142 against the above-named petitioner for the sum of fifty-four hundred dollars ($5,400) and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant, and should be allowed to him out of any fund now or hereafter deposited in the registry of the Court in this proceeding, and that this Court will decree that this claimant recover from the petitioner herein his damages as aforesaid, with interest and costs, and for such other and further relief as may be just.

A. GORDON MURRAY,
Proctor for Claimant,
143 34 Pine Street,
New York.

HUNT, HILL & BETTS,
120 Broadway,
Of Counsel.

Southern District of New York, ss.:

A. GORDON MURRAY, being duly sworn, says he is the proctor for the above-named claimant; that the said claimant is absent from this district and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimant herein; that he has read the foregoing claim and knows the contents thereof and the matters therein
144 stated are true to the best of his knowledge, information and belief; that deponent's means of information are letters from claimant and communications and papers in his possession which he believes to be true.

A. GORDON MURRAY.

Sworn to before me this 1st day of August, 1900.

JOHN E. ROESER,
[SEAL. Notary Public, N. Y. Co.

(Endorsed)—Claim of W. C. Perry, Administrator of the Estate of Kate M. Perry, deceased.—Recd. Augt. 2, 1900.

UNITED STATES DISTRICT COURT, 145

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 146

TO THE HONORABLE ADDISON BROWN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THOMAS ALEXANDER, ESQ., THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of W. C. Perry, administrator of the estate of Sadie Perry, deceased, alleges as follows:

FIRST.—That he is a citizen of the United States and resides in the City of Kansas City, in the State of Missouri. 147

SECOND.—That the above-named petitioner is a corporation organized and existing under the laws of the Republic of France, and the steamship *La Bourgogne* was a French vessel and was owned by the petitioner herein, said petitioner being a common carrier of goods and passengers for hire.

THIRD.—That letters of administration on the estate of Sadie Perry, deceased, were duly granted to this claimant by the Probate Court of Jackson

148 County, State of Missouri, under which he duly qualified and now is qualified to act; that said Sadie Perry, deceased, lost her life and baggage and valuables upon petitioner's steamship *La Bourgogne* at sea on the fourth day of July, 1898; that said deceased took passage on said steamship on the 2nd day of July, 1898, at the City and Port of New York, under a contract for a valuable consideration made with this petitioner for the safe transportation of her person and personal effects from New York to Havre; that while on said voyage the said steamship *La Bourgogne*, through no fault of this claimant's intestate, but wholly by
149 reason of the faults and negligence of the above-named petitioner, its agents and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the claimant's intestate lost her life and property on said vessel.

FOURTH.—That claimant's intestate had baggage and valuables with her on said voyage, as claimant is informed and believes, to the amount of twelve hundred dollars ($1,200), to wit: divers trunks, boxes, valises, clothing, jewelry and other personal effects. Said baggage and property was totally
150 destroyed and lost in the collision by reason of the aforesaid negligence of this petitioner and no part of it has ever been delivered; that heretofore this claimant caused to be brought in his name as plaintiff with this petitioner as defendant a suit at law in the Circuit Court of Cook County, State of Illinois, to recover the amount of damages aforesaid, which suit is now stayed by reason of the proceeding herein.

Wherefore claimant makes and files this his claim against the above-named petitioner for the sum of twelve hundred dollars ($1,200) and prays

that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant, and should be allowed to him out of any fund now or hereafter deposited in the registry of the Court in this proceeding, and that this Court will decree that this claimant recover from the petitioner herein his damages as aforesaid, with interest and costs, and for such other and further relief as may be just. 151

A. GORDON MURRAY,
Proctor for Claimant,
34 Pine Street,
New York.

HUNT, HILL & BETTS, 152
120 Broadway,
Of Counsel.

Southern District of New York, ss:

A. GORDON MURRAY, being duly sworn, says he is the proctor for the above-named claimant; that the said claimant is absent from this district and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimant herein; that he has read the foregoing claim and knows the contents thereof and the matters therein stated are true to the best of his knowledge, information and belief; that deponent's means of information are letters from claimant and communications and papers in his possession which he believes to be true. 153

A. GORDON MURRAY.

Sworn to before me this 1st day of August, 1900.

JOHN E. ROESER,
[SEAL.] Notary Public, N. Y. Co.

(Endorsed)—Claim of W. C. Perry, Administrator of the Estate of Sadie Perry, deceased.—Recd. Augt. 2, 1900.

154

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

155

TO THE HONORABLE ADDISON BROWN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THOMAS ALEXANDER, ESQ., THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of W. C. Perry, administrator of the estate of Florence Perry, deceased, alleges as follows:

FIRST.—That he is a citizen of the United States and resides in the City of Kansas City, in the State
156 of Missouri.

SECOND.—That the above-named petitioner is a corporation organized and existing under the laws of the Republic of France, and the steamship *La Bourgogne* was a French vessel and was owned by the petitioner herein, and said petitioner being a common carrier of goods and passengers for hire.

THIRD.—That letters of administration on the estate of Florence Perry, deceased, were duly granted to this claimant by the Probate Court of Jackson County, State of Missouri, on or about

June 29th, 1899, under which he duly qualified and 157
now is qualified to act; that said Florence Perry, deceased, lost her life and baggage and valuables upon petitioner's steamship *La Bourgogne* at sea on the fourth day of July, 1898; that said deceased took passage on said steamship on the 2nd day of July, 1898, at the City and Port of New York, under a contract for a valuable consideration made with this petitioner for the safe transportation of her person and personal effects from New York to Havre; that while on said voyage the said steamship *La Bourgogne*, through no fault of this claimant's intestate, but wholly by reason of the faults and negligence of the above-named petitioner, its 158
agents and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the claimant's intestate lost her life and property on said vessel.

FOURTH.—That claimant's intestate had baggage and valuables with her on said voyage, as claimant is informed and believes, to the amount of twelve hundred dollars ($1,200), to wit: divers trunks, boxes, valises, clothing, jewelry and other personal effects. Said baggage and property was totally destroyed and lost in the collision by reason of the aforesaid negligence of this petitioner and no part 159
of it has ever been delivered; that heretofore this claimant caused to be brought in his name as plaintiff with this petitioner as defendant a suit at law in the Circuit Court of Cook County, State of Illinois, to recover the amount of damages aforesaid, which suit is now stayed by reason of the proceeding herein.

Wherefore claimant makes and files this his claim against the above-named petitioner for the sum of twelve hundred dollars ($1,200) and prays that the Commissioner appointed to receive claims

herein will report to the Court that the said sum is due to this claimant, and should be allowed to him out of any fund now or hereafter deposited in the registry of the Court in this proceeding, and that this Court will decree that this claimant recover from the petitioner herein his damages as aforesaid, with interest and costs, and for such other and further relief as may be just.

HUNT, HILL & BETTS,
Proctors for Claimant,
120 Broadway,
New York.

A. GORDON MURRAY,
34 Pine Street,
Of Counsel.

Southern District of New York, ss:

GEO. WHITEFIELD BETTS, JR., being duly sworn, says he is one of the proctors for the above-named claimant; that the said claimant is absent from this district and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimant herein; that he has read the foregoing claim and knows the contents thereof and the matters therein stated are true to the best of his knowledge, information and belief; that deponent's means of information are letters from claimant and communications and papers in his possession which he believes to be true.

GEO. WHITEFIELD BETTS, JR.

Sworn to before me this 4th day of August, 1900.

F. W. HOLLS,
Notary Public,
[SEAL.] Westchester and New York County.

(Endorsed)—Claim of W. C. Perry, Administrator of the Estate of Florence Perry, deceased.—Recd. Aug. 4, 1900.

UNITED STATES DISTRICT COURT, 163

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 164

TO THE HONORABLE ADDISON BROWN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THOMAS ALEXANDER, ESQ., THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of John Perry, next of kin of Katherine Perry, deceased, and Albert Perry, deceased, both being minor children of the said John Perry, alleges as follows:

FIRST.—That he is a citizen of the United States and resides in the City of Kansas City, in the State of Missouri. 165

SECOND.—That the above-named petitioner is a corporation organized and existing under the laws of the Republic of France, and the steamship *La Bourgogne* was a French vessel and was owned by the petitioner herein, said petitioner being a common carrier of goods and passengers for hire.

THIRD.—That the said Katherine Perry and Albert Perry lost their lives and baggage and valu-

166 ables upon petitioner's steamship *La Bourgogne* at sea on the 4th day of July, 1898; that said deceased children of the said John Perry took passage on said steamship on the 2nd day of July, 1898, at the City and Port of New York under a contract for a valuable consideration made between this petitioner and this claimant for the safe transportation of the persons and effects of the said minor children from New York to Havre, France; that while on said voyage the said steamship *La Bourgogne*, through no fault of the said deceased minor children or of this claimant, but wholly by reason of the faults and negligence of the above-named petitioner, its agents
167 and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk, and the claimant's minor children aforesaid, with their baggage and personal effects, were lost on said vessel.

FOURTH.—That claimant's minor children aforesaid had baggage and valuables with them on said voyage, as claimant is informed and believes, to the amount of eight hundred dollars ($800), the property of this claimant, to wit: divers trunks, boxes, and valises, containing the wearing apparel, jewelry and personal effects of the aforesaid Kath-
168 erine Perry and Albert Perry. Said baggage and property was totally destroyed and lost in the collision by reason of the aforesaid faults and negligence of this petitioner, and no part of it has ever been delivered; that heretofore this claimant caused to be brought in his name as plaintiff, against this petitioner as defendant, a suit at law in the Circuit Court of Cook County, State of Illinois, to recover the amount of damages as aforesaid, which suit is now stayed by reason of the proceeding herein.

Wherefore claimant makes and files his claim against the within petitioner for the sum of eight

hundred dollars ($800), and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant, and should be allowed to him out of any fund now or hereafter deposited in the registry of the Court in this proceeding, and that this Court will decree that this claimant recover from the petitioner herein his damages as aforesaid, with interest and costs, and for such other and further relief as may be just. 169

A. Gordon Murray,
Proctor for Claimant,
34 Pine Street,
New York. 170

Hunt, Hill & Betts,
120 Broadway,
Of Counsel.

Southern District of New York, ss:

A. Gordon Murray, being duly sworn, says he is the proctor for the above-named claimant; that the said claimant is absent from this district and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimant herein; that he has read the foregoing claim and knows the contents thereof and the matters therein stated are true to the best of his knowledge, information and belief; that deponent's means of information are letters from claimant's attorney and communications and papres in his possession which he believes to be true. 171

A. Gordon Murray.

Sworn to before me this 2nd day of August, 1900.

John E. Roeser,
[seal.] Notary Public, N. Y. Co.

(Endorsed)—Claim of John Perry, next of kin of Katherine Perry, deceased, and Albert Perry, deceased.—Recd. Augt. 2, 1900.

172 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
173 of liability and other relief.

TO THE HONORABLE ADDISON BROWN, UNITED STATES DISTRICT JUDGE FOR THE SOUTHERN DISTRICT OF NEW YORK, AND TO THOMAS ALEXANDER, ESQ., THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of Pauline Henuy, administratrix, alleges as follows:

FOR A FIRST CAUSE OF ACTION:

174 FIRST.—That she resides at #160 East 53rd street, in the City of New York.

SECOND.—That the above-named petitioner is a corporation organized under the laws of the Republic of France, and the steamship *La Bourgogne* was a French vessel and was owned by the said petitioner herein, and petitioner is a common carrier of goods and passengers for hire.

THIRD.—That on or about the 25th day of September, 1898, this claimant was duly appointed, by

the Surrogate of the County of New York, and thereafter duly qualified as administratrix of the goods, chattels and credits of Juliette Cicot, deceased, who lost her life upon petitioner's steamship *La Bourgogne* at sea on the 4th day of July, 1898. Said deceased took passage on said steamship on the 2nd day of July, 1898, at the City and Port of New York, under a contract for a valuable consideration made with this petitioner for the safe transportation of her person and her personal effects between New York and Havre and return. That while on said voyage the said steamship *La Bourgogne*, through no fault of this claimant's intestate, but wholly by reason of the faults and negligence of the above-named petitioner, its agents and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the claimant's intestate lost her life on said vessel. 175 176

FOURTH.—That by the laws of the Republic of France every act which causes damage to another obliges him who has caused the damage to make it good, and every one is responsible for damage which has been caused not only by his own fault, but also by his own negligence or imprudence, or by that of his agents or servants. 177

The aforesaid steamship was a French vessel and sailed under the French flag and was a part of French territory, and that according to the law of France and of the State of New York a cause of action exists in favor of the claimant to recover from the petitioner the damages suffered by reason of the death of said Juliette Cicot.

FIFTH.—That an action to enforce such a liability is maintainable in the Supreme Court of the

178 State of New York, and that on the 5th day of October, 1898, this claimant brought an action at law in the aforesaid Supreme Court against this petitioner as defendant, to recover the sum of fifty thousand dollars ($50,000), which she alleged to be the damage to the estate or next of kin of the aforesaid Juliette Cicot.

SIXTH.—That by reason of the premises this claimant has been damaged in and claims the sum of fifty thousand dollars ($50,000).

FOR A SECOND CAUSE OF ACTION.

179 The claimant, repeating all the allegations made in the First, Second and Third paragraphs of the above First Cause of Action, alleges and claims further:

SEVENTH.—That claimant's intestate had baggage and valuables with her on said voyage, as claimant is informed and believes, to the amount of three thousand six hundred and eighty-four dollars ($3,684), to wit: Baggage and personal effects, $1,258; money, $2,426.

That said baggage and property was totally lost in the collision by reason of the aforesaid negli-
180 gence of the petitioner hereinbefore mentioned, and has never been delivered.

Wherefore claimant makes and files this her claim against the above-named petitioner for the sum of fifty-three thousand six hundred and eighty-four dollars ($53,684), and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant and should be allowed to her out of any fund now or hereafter deposited in the registry of the Court in this proceeding, and that this Court will decree that this claimant recover from the

petitioner herein her damages as aforesaid, with 181
interest and costs, and for such other and further
relief as may be just.

A. GORDON MURRAY.
Proctor for Claimant,
34 Pine Street,
New York.

HUNT, HILL & BETTS,
120 Broadway,
New York,
Of Counsel.

Southern District of New York, ss:

PAULINE HENUY, being duly sworn, says that the 182
above claim is true to her own knowledge, except
as to the matters therein stated to be alleged on in-
formation and belief, and as to those matters she
believes it to be true.

PAULINE HENUY.

Sworn to before me this 1st
day of August, 1900.

JOHN E. ROESER,
[SEAL.] Notary Public, N. Y. Co.

(Endorsed)—Claim of Pauline Henuy.—Recd.
August 2, 1900.

183

184 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of
185 liability.

TO THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of Henry Hyer Knowles, administrator of the estate of Gertrude Lalla Rookh Knowles, alleges as follows, upon information and belief:

FIRST.—That he is a resident of the United States and a resident of the City of New York, as was also said deceased in her lifetime.

186 SECOND.—That the above-named petitioner is a corporation organized under the laws of France and the steamship *La Bourgogne* was a French vessel belonging to petitioner.

THIRD.—That on the 4th day of July, 1898, on the Atlantic Ocean, the said Gertrude Lalla Rookh Knowles died intestate.

FOURTH.—That on the 6th day of December, 1899, limited and ordinary letters of administration upon the goods, chattels and credits of the said

Gertrude Lalla Rookh Knowles were issued to Henry Hyer Knowles by the Surrogate's Court of the County of New York, granting the said administrator power to prosecute the within cause of action. 187

FIFTH.—That said Henry Hyer Knowles duly qualified as such administrator and entered upon the discharge of his office and that the said letters have not been revoked.

SIXTH.—That on or about the second day of July, 1898, the said intestate took passage at New York on the steamship *La Bourgogne* belonging to the above petitioner under a contract with petitioner to be safely transported from the City of New York to the City of Havre, France. That while on said voyage the said steamship *La Bourgogne*, through no fault of this claimant or of said deceased, but by reason of the fault of the above-named petitioner and its agents and servants, came into collision on the fourth day of July, 1898, with the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the said Gertrude Lalla Rookh Knowles, deceased, lost her life. 188

SEVENTH.—That by the law of France every act which causes damage to another obliges him who has caused the damage to repair it and every one is responsible for damage which has been caused not only by his own fault, but also by his own negligence or imprudence, or by that of his agents and servants. 189

EIGHTH.—That by reason of the premises the estate of said deceased has been damaged in the sum of fifty thousand dollars ($50,000).

190 AND FOR A SECOND CAUSE OF ACTION AGAINST SAID PETITIONER THE CLAIMANT HEREIN REPEATS THE ALLEGATIONS MADE IN PARAGRAPHS ONE TO SEVEN INCLUSIVE, AND FOR A SECOND CAUSE OF ACTION FURTHER ALLEGES:

EIGHTH.—Upon information and belief, that said claimant's intestate had baggage and valuables with her on said voyage to the amount of two thousand dollars ($2,000), as claimant believes, to wit: divers trunks, boxes, valises, clothing, jewelry and other personal effects, and that said baggage and property was totally destroyed and lost in the aforesaid collision by reason of the negligence of
191 this petitioner and that no part of same has ever been delivered.

Wherefore, the said Henry Hyer Knowles, as such administrator as aforesaid, hereby makes and files his claim against the above-named petitioner for the sum of fifty-two thousand dollars ($52,000), and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant, and should be allowed to him as such administrator out of any fund deposited in the registry of the Court in this proceeding.

Dated New York, August 21, 1900.

192 ALEXANDER & COLBY,
Proctors for Claimant,
Office and Post Office address,
120 Broadway,
Borough of Manhattan,
New York City.

193

County of New York, } ss.:
State of New York, }

HENRY M. ALEXANDER, being duly sworn, deposes and says:

That he is a member of the firm of Alexander & Colby; that he has read the foregoing claim and knows it to be true except as to those matters stated upon information and belief, and as to those maters he believes it to be true.

That the sources of his information and grounds of his belief are certain letters and memoranda from the above petitioner and from said claimant, and consultations with said claimant in the office of Alexander & Colby, proctors for claimant. 194

That the reason why this affidavit is not made by the claimant is that he is more than one hundred miles from the City of New York, and without the State of New York.

HENRY M. ALEXANDER.

Sworn to before me this 20th day of August, 1900.

WALTER H. MERRIAM,
Notary Public,
N. Y. Co.

(Endorsed)—Claim of Henry Hyer Knowles as Administrator, &c.—Recd. Aug. 21, 1900. 195

196 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
197 of liability.

To the Commissioner appointed to receive claims herein, the CLAIM OF LOUIS DELFONTI alleges as follows:—

FIRST.—That he is an alien residing in Boston, Massachusetts, District of Massachusetts.

SECOND.—That on or about the 2nd day of July, 1898, the said claimant took passage at New York on the steamship *La Bourgogne*, belonging to the above petitioner, to be safely transported together
198 with his baggage, under contract with petitioner from the City of New York to the City of Havre, France, and that it was the duty of the said petitioner, as a common carrier, to so transport the said claimant.

THIRD.—That while on said voyage, the said steamship *La Bourgogne*, through no fault of the claimant, but by reason of the fault of the above named petitioner, and its agents and servants, came into collision on the 4th day of July, 1898, with the

British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the said claimant was made sick, sore, lame and disordered, and suffered personal injuries and severe shock to his nervous system and bodily and mental pain and anguish. And as a matter of special damage, claimant suffered the loss of his entire baggage and all the personal property which plaintiff had with him on said *Bourgogne* and was compelled to and engage the services of a physician for his treatment and suffered serious inconvenience and loss of earnings and was damaged and injured in the sum of ten thousand dollars. 199

FOURTH.—That by the law of France every act which causes damage to another obliges him, who has caused the damage to repair it, and every one is responsible for damage which has been caused not only by his own fault but also by his own negligence and imprudence or that of his agents and servants. 200

FIFTH.—That the above named petitioner is a corporation organized under the laws of France and the steamship *La Bourgogne* was a French vessel.

SIXTH.—That by reason of the premises the said claimant has been damaged in the sum of Ten thousand Dollars. 201

Wherefore, the said Louis Delfonti, as such claimant as aforesaid, hereby makes and files his claim against the above named petitioner for the sum of Ten thousand Dollars, and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant and should be allowed to him out of any

fund deposited in the registry of this Court in this Proceeding.

BULLOWA & BULLOWA,
Proctors for Claimant,
31 Nassau Street,
N. Y. City.

UNITED STATES OF AMERICA,
Commonwealth of Massachusetts, } ss.:
Hampden County.

LOUIS DELFONTI, being duly sworn, says: that the above claim is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

LOUIS DEL FONTI. [SEAL.]

Subscribed and sworn to before me August 9th, 1900.
[SEAL.] GEORGE H. HAPGOOD,
Justice of the Peace.

UNITED STATES OF AMERICA,
City, County and State of New York, } ss.:

LOUIS DELFONTI, being duly sworn, says: That the above claim is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

LOUIS DEL FONTI.

Subscribed and sworn to before me this 13th day of August, 1900.
[L. S.] ARNOLD W. SHERMAN,
Notary Public Kings Co.
Cert. filed New York Co.

(Endorsed)—Claim.—Rec'd Aug. 21, 1900.

205

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

206

To the Commissioner appointed to receive claims herein, the CLAIM OF ENRICO CIRRI, alleges as follows:—

FIRST.—That he is an alien residing in Boston, Massachusetts, District of Massachusetts.

SECOND.—That on or about the 2nd day of July, 1898, the said claimant took passage at New York on the steamship *La Bourgogne*, belonging to the above petitioner, to be safely transported, together with his baggage, under a contract with petitioner, from the City of New York to the City of Havre, France, and that it was the duty of the said petitioner, as a common carrier, to so transport the said claimant.

207

THIRD.—That while on said voyage the said steamship *La Bourgogne*, through no fault of the claimant, but by reason of the fault of the above named petitioner, and its agents and servants, came into collision on the 4th day of July, 1898, with

208 the British ship *Cromartyshire*, by reason of which collision *La Bourgogne* was sunk and the said claimant was made sick, sore, lame and disordered, and suffered personal injuries and severe shock to his nervous system and bodily and mental pain and anguish. And as a matter of special damage, claimant suffered the loss of his entire baggage and all the personal property which plaintiff had with him on said *Burgogne*, and was compelled to and did engage the services of a physician for his treatment and suffered serious inconvenience and loss of earnings and was damaged and injured in the sum of ten thousand dollars.

209 FOURTH.—That by the law of France every act which causes damage to another obliges him who has caused the damage to repair it and every one is responsible for damage which has been caused not only by his own fault but also by his own negligence and imprudence or that of his agents and servants.

FIFTH.—That the above named petitioner is a corporation organized under the laws of France and the steamship *La Bourgogne* was a French vessel.

SIXTH.—That by reason of the premises the said
210 claimant has been damaged in the sum of Ten thousand Dollars.

Wherefore, the said Enrico Cirri, as such claimant as aforesaid, hereby makes and files his claim against the above named petitioner for the sum of Ten thousand Dollars, and prays that the Commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant and should be allowed to him out of any

fund deposited in the registry of this Court in this 211
proceeding.

BULLOWA & BULLOWA,
Proctors for Claimant,
31 Nassau Street,
N. Y. City.

(Certificate of authentication, Secretary of State.)

UNITED STATES OF AMERICA,
State of Massachusetts,
County of Suffolk, } ss.:

ENRICO CIRRI, being duly sworn, says: That the above claim is true to his own knowledge, except as 212
to the matters therein stated to be alleged on information and belief and as to those matters he believes them to be true.

ENRICO CIRRI. [L. S.]

Subscribed and sworn to before me August 9th, 1900.
[SEAL.] NICCOLA J. GHILARDUCCI,
Comm. expires June 30th, 1903.

This Claim is presented without prejudice to the Claimant's answer to the petitioner and objection to the limitation of petitioner's liability.

BULLOWA & BULLOWA, 213
Proctors for Claimant,
31 Nassau Street,
N. Y. City.

(Endorsed)—Claim.—Rec'd Augt. 21, 1900.

214 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
215 of liability.

TO THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claim of Josephine M. Chanut alleges as follows:

FIRST.—That she is a citizen of the United States, and a resident of the City of New York. That heretofore Letters Testamentary were duly issued to your claimant out of the Surrogate's Court in and for the County of Westchester, in the State of New
216 York, under the Last Will and Testament of Jean Chanut, deceased.

SECOND.—That the above named petitioner is a corporation organized under the Laws of France, and the steamship *La Bourgogne* was a French vessel belonging to petitioner.

THIRD.—That on or about the 2nd day of July, 1898, the said Jean M. Chanut took passage at New York on the steamship *La Bourgogne*, under a contract with petitioner to be safely transported from

the City of New York to the City of Havre, France. 217
That, while on said voyage the said steamship *La Bourgogne*, through no fault of said Jean M. Chanut, but by reason of the fault of the above named petitioner, and its agents and servants, came into collision on the 4th of July, 1898, with the British ship *Cromartyshire*, by reason of which collision the said steamship *La Bourgogne* was sunk and said Jean M. Chanut lost his life.

FOURTH.—That by the law of France every act which causes damage to another obliges him who has caused the damage to repair it, and every one is responsible for damage which has been caused 218
not only by his own fault, but also by his own negligence or imprudence, or by that of his agents and servants.

FIFTH.—That by reason of the premises the heirs and next of kin of said deceased have been damaged in the sum of one hundred thousand dollars.

Wherefore, claimant hereby makes and files her claim against the above named petitioner for the sum of one hundred thousand dollars, and prays that the commissioner appointed to receive claims herein will report to the Court that the said sum is due to the heirs and next of kin of said deceased 219
and should be allowed to them out of any fund deposited in the registry of the Court in this proceeding.

JUDSON G. WELLS,
Proctor for Claimant,
10 East 14th St.,
New York City.

Southern District of New York, ss.:

JOSEPHINE M. CHANUT, being duly sworn, says that the above claim is true to her own knowledge,

220 except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

JOSEPHINE M. CHANUT.

Sworn to before me this 20th day of August, 1900.

(Endorsed)—Claim of Josephine M. Chanut.—Rec'd Aug. 20, 1900.

UNITED STATES DISTRICT COURT,

221

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

222

TO THE COMMISSIONER APPOINTED TO RECEIVE CLAIMS HEREIN:

The claimant, Arthur E. White, as executor of the last will and testament of Joseph H. Durkee, deceased, alleges as follows:—

FIRST.—That he is a citizen of the United States and a resident of the City of New York.

SECOND.—That the above named petitioner is a corporation organized under the laws of France and

the Steamship *La Bourgogne* was a French vessel belonging to petitioner. 223

THIRD.—That on or about the 2nd day of July, 1898, said Joseph H. Durkee took passage at New York on the Steamship *La Bourgogne* under a contract with petitioner to be safely transported from the City of New York to the City of Havre, France. That while on said voyage the said Steamship *La Bourgogne,* through no fault of said Joseph H. Durkee or of this claimant, but by reason of the fault of the above named petitioner and its agents and servants, came into collision on the 4th day of July, 1898, with the British ship *Cromartyshire.* 224 By reason of which collision *La Bourgogne* was sunk and said Joseph H. Durkee lost his life.

FOURTH.—That by the laws of France every act which causes damage to another obliges him who has caused the damage to repair it and every one is responsible not only for damage which has been caused by his own fault, but also for that caused by his own negligence or imprudence or by the negligence or imprudence of his agents or servants.

FIFTH.—That said Joseph H. Durkee left him surviving his wife, Alida Durkee, and his brothers, Richard P. H. Durkee and Augustus W. Durkee, 225 and his sister, Elizabeth H. Crane, his sole next of kin, but no descendant and no father or mother.

SIXTH.—That said Joseph H. Durkee left a last will and testament, which was, on the 18th day of October, 1898, duly admitted to probate by a Surrogate of the County of New York, and that, on the 19th day of October, 1898, letters testamentary under said last will and testament were duly issued to this claimant by a Surrogate of the County of New York and that this claimant thereupon duly

226 qualified as the sole executor of said Joseph H. Durkee, deceased, and has since acted as such.

SEVENTH.—That by reason of the premises said widow and next of kin of said Joseph H. Durkee, deceased, and this claimant representing them, have been damaged in the sum of One Hundred Thousand Dollars.

Wherefore, claimant hereby makes and files his claim against the above named petitioner for the sum of One Hundred Thousand Dollars and prays that the commissioner appointed to receive claims herein will report to the Court that the said sum is due to this claimant and should be allowed to him
227 out of any fund deposited in the Registry of the Court for this proceeding.

WM. R. PAGE,
Proctor for Claimant,
257 Broadway, New York.

(Endorsed)—Claim of Arthur E. White, as executor of Joseph H. Durkee, deceased.—Rec'd Augt. 21, 1900.

Southern District of New York, ss.:

ARTHUR E. WHITE, being duly sworn, says that the matters alleged in the foregoing claim are true,
228 except as to the matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.

ARTHUR E. WHITE.

Sworn to before me this 16th
day of July, 1900.

[L. S.] W. P. WAINWRIGHT,
Notary Public (No. 1),
N. Y. County.

UNITED STATES DISTRICT COURT, 229

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of the Steamship "LA BOURGOGNE." 230

TO THE DISTRICT COURT OF THE UNITED STATES, FOR THE SOUTHERN DISTRICT OF NEW YORK:

"I, THOMAS ALEXANDER, the Commissioner named in the order of the Court made and entered in this proceeding, and bearing date 15th day of May, 1900, and before whom the claims of all persons for any and all loss, destruction, damage or injury caused by or resulting from the collision set forth in the libel and petition herein were required to be presented on or before the 21st day of August, 1900, do respectfully report that four classes of 231 claims have been presented to me, viz.:

(1) Claims for loss of property and damage resulting from death.

(2) Claims for damage resulting from death.

(3) Claims for loss of personal effects and other property.

(4) Claims for personal injuries and loss of personal effects.

232 *Of the first class for loss of property and damage resulting from death, I have received eighteen claims:*

That of George Deslions for loss of his wife and child.....	$50,000 00	
For loss of personal property..	50,000 00	$100,000 00
That of Kitty G. Truax, as Administratrix of Harriet M. Tower:		
For loss of Harriet M. Tower..	50,000 00	
For loss of personal effects ...	498 00	50,498 00
That of Harold O. Crane, as Administrator of Edward L. Walter:		
For loss of Edward L. Walter..	50,000 00	
For loss of personal effects....	400 00	
233		50,400 00
That of Ernest C. Cook, as Administrator of Clara Belle Cook:		
For loss of Clara Belle Cook...	50,000 00	
For loss of personal effects	1,000 00	51,000 00
That of Edwin S. Osgood, as Administrator of Lizzie A. Osgood:		
For loss of Lizzie A. Osgood...	50,000 00	
For loss of personal effects....	2,000 00	52,000 00
That of Theresa Dell Anglica, as Administratrix of Cherubino Dell Anglica:		
For loss of Cherubino Dell Anglica	50,000 00	
For loss of personal effects	1,752 00	51,752 00
234 That of Edwin S. Osgood, as Administrator of Edwin H. Osgood:		
For loss of Edwin H. Osgood..	50,000 00	
For loss of personal effects	150 00	50,150 00
That of Ernest V. Crumb, as Administrator of Francis L. Rundell:		
For loss of Francis L. Rundell	50,000 00	
For loss of personal effects....	385 00	50,385 00
That of Charles H. Williams, as Administrator of Ralph L. Williams:		
For loss of Ralph L. Williams.	50,000 00	
For loss of personal effects....	381 05	50,381 05

That of Pauline Henny, as Administratrix of Juliette Cicot:			235
For loss of Juliette Cicot . ..	50,000 00		
For loss of money.....	2,426 00		
For loss of personal effects....	1,258 00		
		53,684 00	
That of Anna Malagrano, as widow and heir of Louis Malagrano:			
For loss of Louis Malagrano ..	$50,000 00		
For loss of personal effects....	1,000 00		
		51,000 00	
That of James Marshall, as Administrator of Edith Marshall:			
For loss of Edith Marshall....	5,000 00		
For loss of personal effects....	2,040 00		
		7,040 00	
That of Jeanne Laurisheese, as Administratrix of Gabrielle Carriere:			
For loss of Gabrielle Carriere..	30,000 00		236
For loss of personal effects	300 00		
		30,300 00	
That of Johanna Huberton Van Tongelin as next-of-kin of Caroline Janssen:			
For loss of Caroline Janssen...	30,000 00		
For loss of personal effects....	800 00		
		30,800 00	
That of Antonio Molinari for loss of his wife and two children.....	50,000 00		
For loss of personal property..	50,000 00		
		100,000 00	
That of Charles Rabolli for loss of his wife and child	$50 000 00		
For loss of personal property..	75,000 00		
		100,000 00	
That of Charles Aubry for loss of his wife and two children.....	50,000 00		237
For loss of personal property..	1,500 00		
		76,500 00	
That of Henry Hyer Knowles, as administrator of Gertrude Lalla Rookh Knowles:			
For loss of Gertrude Lalla Rookh Knowles.....	50,000 00		
For loss of personal effects....	200 00		
		25,000 00	
Making a total of		$1,006,090 05	

Of the *second* class for *damage resulting from death* I have received thirty-one claims:

That of Adrian Hummel for damage resulting from the death of his wife and two childre ...	$50,000 00

238	That of Irene Cesere, as Administratrix of Guiseppe Cesere	25,000 00
	That of Guisseppina Bacilieri, as Administratrix of Cesare Forni	10,000 00
	That of Charles L. Rundell, as Administrator of Edwin R. Rundell	50,000 00
	That of Lucia Thionnet, as Administrator of Celestine Thionnet	25,000 00
	That of Annazetta Stratton, as Administratrix of Catherine Elizabeth McFarland	20,000 00
	That of Catrina Casazza, as Administratrix of Luigi Casazza	30,000 00
	That of Catrina Casazza, as Administratrix of Rose Casazza	30,000 00
	That of Charles Casazza, as Administrator of Giacomo Casazza	30,000 00
239	That of Louise Gachot, as Administratrix of Caroline Kiehl	30,000 00
	That of Charles Mayer, as Administrator of Henry Mayer	30,000 00
	That of Adrien Raymond, as Administrator of Adele Raymond	30,000 00
	That of Joseph B. Anstin, as Administrator of Walter V. Clark	30,000 00
	That of Ferdinand Bertoncini, as Administrator of Adamo Orsi	30,000 00
	That of Luighi Bonughi, as Administrator of Umberto Bonughi	30,000 00
	That of Gustave Nicolas, for loss of life of John B. Nicolas	30,000 00
	That of Anna Graf, as Administratrix of Adolph Graf	30,000 00
	That of Henry Wuertz, as Administrator of Emile H. Wuertz	30,000 00
240	That of Vincent F. Metelli for loss of his wife Caroline Metelli and his three children, Vincent, Jean and Caroline Metelli	120,000 00
	That of Joe Messina, as next of kin of Nicola B. Di Rago	30,000 00
	That of Juan J. Jiminez, as Administrator of Ramon Jiminez	25,000 00
	That of Hecsor Grassi, as Administrator of Lorenzo Polkeri	30,000 00
	That of Clorinda Alpi, as administratrix of Joseph Alpi	50,000 00
	That of Comprani Bartolomeo, as administrator of Agostino Comprani	15,000 00
	That of Josephine M. Chanut, as Administratrix of Jean M. Chanut	100,000 00

That of Gaillard, as Administratrix of Rene Gaillard	30,000 00
That of Fredericka Luster, as Administratrix of Simon Koppe	50,000 00
That of Katherine Fellini, as Administratrix of John Fellini	15,000 00
That of Joseph S. Jentzen, as Administrator of Matilda C. Schultz	25,000 00
That of Clorinda Alpi, as Administratrix of John Alpi	50,000 00
That of Arthur E. White, as Executor of Joseph H. Durkee	100,000 00
Making a total of	$1,180,000 00

241

Of the *third* class for *loss of personal effects and other property*, I have received seven claims:

That of Lucia Thionnet	$950 00
That of W. C. Perry, as Administrator of Florence Perry	1,200 00
That of W. C. Perry, as Administrator of Sadie Perry	1,200 00
That of W. C. Perry, as Administrator of Kate M. Perry	5,400 00
That of John Perry, as next of kin of Katherine Perry and Albert Perry	800 00
That of Lucien Terlaud	280 00
That of Charlotte Halporn, as Administratrix of Edward Halporn	32,224 00
Making a total of	$42,058 00

242

Of the *fourth* class for *personal injuries and loss of personal effects* I have received two claims:

That of Louis Delfonte, for	$10,000 00
That of Enrico Cirri, for	10,000 00
Making a total of	$20,000 00

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That no other claims have been presented to me herein.

That the said claims are hereto annexed and constitute a portion of this report.

All of which is respectfully submitted.

Dated New York, August 21st, 1900.

Thos. Alexander,
U. S. Commissioner."

(Endorsed)—Report of Claims.—Filed August 21, 1900.

244 To the Honorable Addison Brown, Judge of the District Court of the United States for the Southern District of New York:

The Answer of George DesLions, Adrian Hummel, Irene Cesere, Administratrix of Guiseppe Cesere, Antonio Molinai and Charles Rabolli, deceased, to the libel and petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for Limitation of Liability and other relief, alleges as follows:

First.—They admit the allegations of the first article of the petition.

245

Second.—They admit the allegations of the second article thereof.

Third.—They admit that on Saturday, July 2, 1898, the steamship *La Bourgogne* departed from New York with merchandise and passengers, and that she was bound to Havre, and that she was on one of her regular voyages.

Fourth.—As to the allegations of the fourth article they have no personal knowledge, but they are informed and believe that on the morning of July 4th, 1898, the *Bourgogne* was about sixty miles
246 south of Sable Island, and that a dense fog prevailed, and that a collision there occurred between the *Bourgogne* and the ship *Cromartyshire*, as a result of which the *Bourgogne* was sunk. And as to all the other allegations of said fourth article they have no knowledge or information sufficient to form a belief, and therefore deny the same.

Fifth.—They deny that, as alleged in the Fifth Article the said collision was not caused by fault or negligence of the said *Bourgogne* or her officers

and men in charge of her navigation, and they allege that the same was caused by negligence on the part of the said steamer, and of those in charge of her navigation, and of the petitioner, as will be hereafter stated. And as to the allegations of said Fifth Article with reference to the fault and negligence of the *Cromartyshire*, they have no knowledge, and therefore they deny the same, and leave the petitioner to the proof thereof. 247

SIXTH.—They deny that the loss, damage or injury caused by said collision was without the privity or knowledge of the petitioner, or was without fault or negligence on the part of those in charge of the navigation of the *Bourgogne*. 248

SEVENTH.—They admit that claims have been made and suits brought against the petitioner, to recover damages caused by said collision, but whether the list of suits and claims stated in the seventh article of the petition is correct, they have no sufficient knowledge, and therefore they deny the allegations in relation thereto, and leave the Petitioner to the proof thereof.

EIGHTH.—They deny that the *Bourgogne* and her cargo and her pending freight were totally lost, and they deny that by reason of any such loss, the liability of the petitioner or the amount or value of the petitioner's interest in the vessel and her pending freight or of the petitioner's interest as owner of such vessel and her pending freight is or amounts to nothing except the value of the life boat and life raft in said petition mentioned. 249

NINTH.—They have no knowledge as to the allegations of the ninth article, and deny the matters alleged in the tenth article of the petition.

250 TENTH.—And these claimants for a further answer and defense to the petition, allege that the Petitioner is not entitled to any limitation of its liability as prayed for by reason of the following facts which, on information and belief they allege, viz.

1. The said collision was caused by fault and negligence on the part of those navigating said steamer, and also on the part of the petitioner, in that the said steamer was being navigated by those in charge of her navigation in a manner forbidden by law. And furthermore that the Petitioner had never made any proper regulations for giving to the Commanders of its vessels or to the Commander of
251 the *Bourgogne* any directions such as would ensure that the navigation of the steamers belonging to it and the navigation of the *Bourgogne*, should be conducted in accordance with law, and prudently under the circumstances under which she was being navigated.

2. That the said Petitioner was required and in duty bound to have the said steamer *Bourgogne* fully fitted, manned and equipped when she sailed from the port of New York, in all respects as was required by the laws of the United States in respect to steamers carrying passengers and sailing from
252 a port of the United States, but that the said Petitioner had not complied with the provisions of said laws, and that the said steamer was not provided when she sailed from New York with watertight bulkheads, or with boats or with boat disengaging apparatus such as she was by the laws of the United States required to be furnished with.

3. That the Petitioner has not complied with the provisions of the Statutes of the United States and the Rules of the Supreme Court in reference to the obtaining of a limitation of its liability, and that

it has not surrendered the said vessel or its interest therein, or the freight pending or its interest therein, and has not put the same or any part thereof within the jurisdiction of the Court, or made any conveyance of its title thereto in this proceeding, or for the purposes of this suit, and in that it has received large amounts of freight, and of passage money, for this voyage, which it has retained in its own possession, and has refused to put in the jurisdiction of the Court, alleging untruly that the same has been wholly lost, and is nothing. 253

And in that it has received from the French Government a large amount of money as a subvention or subsidy for said voyage of said steamer, which money the claimants allege to be properly included as a part of the pending freight, which amount of money the petitioner has retained in its own possession and has not delivered to the jurisdiction of this Court or offered to so deliver the same, but it has untruly alleged that all the pending freight of said vessel for said voyage was totally lost. 254

ELEVENTH.—That the above named claimants have duly made and duly filed their claims with the Commissioner duly appointed herein to receive claims.

Wherefore, the claimants pray that the petition herein may be dismissed with costs, and that the claimants may be awarded their damages as indicated by the claims heretofore filed, and may have such other and further relief as may be just. 255

BENEDICT & BENEDICT,
Proctors for Claimants.

Southern District of New York, ss.:

GEORGE DES LIONS and ADRIAN HUMMEL, being severally duly sworn, each deposes and says that the foregoing answer is true to his own knowledge,

256 except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

GEORGE DES LIONS,
ADRIAN HUMMEL.

Sworn to before me this 28th day of August, 1900, by Des Lions, and on the 30th August, 1900, by Hummel.
[SEAL.] WILLIAM D. JONES,
U. S. Commissioner,
S. D. of N. Y.

257

Southern District of New York, ss.:

EDWARD G. BENEDICT, being duly sworn, says that he is one of the proctors for Irene Cesere, Administratrix, etc., Antonio Molinari and Charles Rabolli, and that the foregoing answer is true of his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true. That the reason deponent makes this verification is because said claimants are not within this district or State. That the grounds of deponent's belief are letters received from claimants' attorneys and a general
258 knowledge of the whole proceeding.

E. G. BENEDICT.

Sworn to before me this 30th day of August, 1900.
[SEAL.] WM. D. JONES,
U. S. Commissioner,
S. D. of N. Y.

INTERROGATORIES PROPOUNDED TO LIBELLANT, AS TO WHICH ITS PERSONAL ANSWERS ARE REQUIRED UPON OATH OR SOLEMN AFFIRMATION. 259

FIRST.—When was the Compagnie General Transatlantique incorporated?

Allowed.

SECOND.—What have been and are the principal officers of that corporation? What were the names of the persons who held such offices, in the summer of 1898, and how long had each of them held such office?

Allowed.

THIRD.—By what were the duties of each of said officers fixed and determined? 260

If such duties, or any of them, were prescribed by any incorporation of the Company, or by any Bylaw or Regulation adopted, or any vote passed by said Company or the Directors thereof, annex to your answer a copy of such Incorporation by law, regulation or vote.

Allowed.

FOURTH.—Was there not an agreement between the petitioner and the Governmnet of France or some Department or officer of said Government, in existence in July, 1898, in relation to the navigation of said Steamer *La Bourgogne*, and the other steamers of the petitioner herein which ran between the ports of La Havre and New York? 261

If there was annex to your answer a copy of such agreement, and of any law of France or Ministerial Order under and by virtue of which such agreement was made.

Allowed.

FIFTH.—When, with reference to the terms of such agreement, did the year begin and expire in the

262 course of which the voyage of the *Bourgogne* occurred, in the course of which she was sunk?

Allowed.

What amount of money did the petitioner receive under said agreement for services rendered under said agreement during said year? (And what was the amount received during the year previous and the year subsequent to that year?)

Disallowed as irrelevant.

SIXTH.—Was not the amount which was to be received by the Petitioner under said agreement af-
263 fected, so as to be increased or diminished, if the average speed made by any of its steamers running between Le Havre and New York, was increased or diminished?

Allowed.

And was not the average speed of each steamer for each voyage therefore calculated from the speed run by each steamer as shown by the log of each voyage?

Allowed.

SEVENTH.—Was not the log of each steamer for each voyage examined in order that the Petitioner
264 herein, or some of its officers, might know what had been the average speed of such steamer for each voyage?

Allowed.

EIGHTH.—Was not each voyage of each of said steamers numbered? What was the number of the voyage of the *Bourgogne* on which she was lost? And was not each sailing of each steamer from Havre to New York and back to Havre treated as and called one voyage? Were not the accounts of

each such voyage from Havre to New York and back to Havre kept separate from the accounts of the other voyages? 265

Allowed.

NINTH.—Were not regulations prepared on behalf of said Company, and by it delivered in a printed form to each of its Captains of steamers sailing between New York and Havre?

Allowed.

TENTH.—What was the name of the Captain of the *Bourgogne*, who commanded her on her last voyage? (And was not a copy of the Regulations referred to in the last interrogatory furnished to him by the Petitioner?) 266

Allowed. Allowed.

ELEVENTH.—Was not Article 395 of such Regulations the regulation furnished by the Petitioner to its Captains sailing between New York and Havre, as to the navigation to be observed by him during foggy weather?

Allowed.

Annex to your answer a copy of such Article 395, or if you say that said Article 395 was not the regulation furnished as above, then annex to your answer a copy of any other regulation furnished by the Petitioner to its captains in relation to that matter. 267

Allowed.

TWELFTH.—Did not the Petitioner have insurance on the said steamer *Bourgogne* at and before the time of her loss? If so, to what amount and who were the insurers? Has any of such insurance been paid, and if so, by whom? Give the amount insured by each insurer and the amount paid by each insurer.

Disallowed as irrelevant.

268 THIRTEENTH.—Was any abandonment of the *Bourgogne* after her loss made by the Petitioner to any insurer of her?

Allowed.

FOURTEENTH.—Was any abandonment of any kind made by the Compagnie Generale Transatlantique, the owner of the *Bourgogne*, whereby the said owner abandoned the *Bourgogne* and her freight, for the purpose of freeing itself from liability by reason of the collision and loss of the *Bourgogne*, referred to in the petition herein?

If there was, annex to your answers hereto a copy
269 of such abandonment.

Allowed.

FIFTEENTH.—Was not a suit brought before the Admiralty Court of England on behalf of the owners of the ship *Cromartyshire* against the Petitioner herein, to recover the damages occasioned to the *Cromartyshire* by the collision with the *Bourgogne*, which occasioned the loss of the *Bourgogne?* And did not such suit result finally in a decree that the Petitioner should pay such damages to the said owners of the *Cromartyshire?*

Disallowed as irrelevant.

270 And have not such damages so decreed been paid by the Petitioner? If they have been, what has been the amount thus paid? If they have not been paid, what is the present position of such suit above referred to?

Disallowed.

SIXTEENTH.—Was there not at the times mentioned in the libel an arrangement between petitioner and the commanders of its steamers running between New York and Havre, whereby it became

to the personal profit of a commander of a ship of the Compagnie Generale Transatlantique to make a speedy voyage, and to his personal loss if the voyage was delayed? 271

Allowed.

BENEDICT & BENEDICT,
Proctors for Claimants.

(Endorsed)—Answer.—Interrogatories settled Oct. 31, 1900.—A. B.—Filed Oct. 31, 1900.

U. S. DISTRICT COURT, 272

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

273

TO THE HONORABLE ADDISON BROWN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The Answer of W. C. Perry, Administrator of the Estate of Kate M. Perry, deceased; the Estate of Florence Perry, deceased; the Estate of Sadie Perry, deceased; and of John Perry, father and next of kin of the infants Katherine Perry and Albert Perry, deceased; and of Pauline Henuy, administratrix of the Estate of Juliette Cicot, deceased, to

274 the libel and petition of La Compagnie Generale Transatlantique, owner of the Steamship *La Bourgogne*, for Limitation of Liability, and other relief, alleges as follows:

FIRST.—They admit the allegations of the first article of the petition.

SECOND.—They admit the allegation of the second article of the petition.

THIRD.—They admit that on Saturday, July 2nd, 1898, the Steamship *La Bourgogne* departed from New York with merchandise and passengers, and
275 that she was bound to Havre, and that she was on one of her regular voyages.

FOURTH.—As to the allegations of the fourth article, they have no personal knowledge, but they are informed and believe that on the morning of July 4th, 1898, the *Bourgogne* was about sixty miles south of Sable Island, running at a high and immoderate rate of speed, and that a dense fog prevailed, and that a collision there occurred between *La Bourgogne* and the ship *Cromartyshire*, as a result of which *La Bourgogne* was sunk. And as to all the other allegations of said fourth article they
276 have no knowledge or information sufficient to form a belief, and therefore deny the same.

FIFTH.—They deny that, as alleged in the fourth article, the said collision was not caused by fault or negligence of the said *La Bourgogne* or her officers and men in charge of her navigation, and they allege that the same was caused by negligence on the part of the said steamer, and of those in charge of her navigation, and of the petitioner as will be hereafter stated. And as to the allegations of said fifth article with reference to the fault and negligence of

the *Cromartyshire*, they have no knowledge, and 277
therefore leave the petitioner to the proof thereof.

SIXTH.—They deny that the loss, damage or injury caused by said collision was without the privity or knowledge of the petitioner, or was without fault or negligence on the part of those in charge of the navigation of *La Bourgogne*.

SEVENTH.—They admit that claims have been made and that several separate suits have been brought against the petitioner by themselves, to recover damages caused by said collision, but whether the list of suits and claims stated in the seventh article of the petition is correct, they have no sufficient knowledge, and therefore they deny the allegations in relation thereto, and leave the petitioner to the proof thereof. 278

EIGHTH.—They deny that the *Bourgogne* and her cargo and her pending freight were totally lost, except the life boat and life raft mentioned, and they deny that by reason of any such loss, the liability of the petitioner or the amount or value of the petitioner's interest in the vessel and her pending freight or of the petitioner's interest as owner of such vessel and her pending freight is or amounts to nothing except the value of the life boat and life raft in said petition mentioned. 279

NINTH.—They deny the matters alleged in the tenth article of the petition.

TENTH.—And these claimants for a further answer and defense to the petition, allege that the petitioner is not entitled to any limitation of its liability as prayed for by reason of the following facts, among others, which on information and belief they allege, viz.:

(1.) The said collision was caused by fault and negligence on the part of those navigating said

280 steamer, and also on the part of the petitioner, in that the said steamer was being navigated by those in charge of her navigation in a manner forbidden by the International Rules for the Prevention of Collision at sea, with knowledge on the part of the petitioner that she would be so navigated in violation of law, and without any proper action ever having been taken on the part of the petitioner to prevent such navigating of her in a manner forbidden by law. And furthermore, that the petitioner had never made any proper regulations or given to the Commanders of its vessels or to the Commander of *La Bourgogne* any directions such
281 as would ensure that the navigation of the steamers belonging to it and the navigation of *La Bourgogne* should be conducted in accordance with law, and prudently under the circumstances under which she was being navigated; and in that said steamer was proceeding at a high, dangerous and immoderate speed in fog, was not keeping a proper lookout, was not sounding the signals required by law and prudence, and did not hear the signals given by the *Cromartyshire* and did not stop and reverse in time to avoid collision, or do all in her power to do so.

(2.) That the said petitioner was required and in duty bound to have the said steamer *La Bourgogne*
282 fully fitted, manned and equipped when she sailed from the Port of New York, in all respects as was required by the laws of the United States in respect to steamers carrying passengers and sailing from a port of the United States, but that the said petitioner had not complied with the provisions of said laws, and that the said steamer was not provided when she sailed from New York with water-tight bulkheads, or with boats or with boat-disengaging apparatus, as she was by the laws of the United States required to be furnished with, or with a sufficient number of boats, and was not properly

equipped or manned by competent master, officers 283
or crew.

(3.) That the petitioner has not complied with the provisions of the Statutes of the United States, and the Rules of the Supreme Court in reference to the obtaining of a limitation of its liability, in that proper steps have not been taken to make known the amount or value of its interest in said *La Bourgogne* and her freight for the voyage, and that it has not surrendered its said vessel, or its interests therein, or the freight pending or its interests therein, and has not put the same or any part thereof within the jurisdiction of the Court, or made any 284
conveyance of its title thereto in this proceeding, or for the purposes of this suit, and in that it has received large amounts of freight, and of passage money for this voyage, which it has retained in its own possession, and has refused to put in the jurisdiction of the Court, alleging untruly that the same has been wholly lost, and is nothing.

And in that it has received from the French Government a large amount of money as a subvention or subsidy for carrying the mails or for other services for said voyage of said steamer, which money the claimants allege to be properly included as a part of the pending freight, which amount of money the 285
petitioner has retained in its own possession and has not delivered to the jurisdiction of this Court, or offered to so deliver the same, but it has untruly alleged that all the pending freight of said vessel for said voyage was totally lost.

(4.) In that with the knowledge and privity of the petitioner said Steamship *La Bourgogne* was sent to sea at Havre on or about June 18th, 1898, and at New York on July 2nd, 1898, in charge of a Captain who by reason of his mental condition was incompetent and unfit to command the said

286 steamship, and she was therefore unseaworthy in that respect.

(5.) In that with the knowledge and privity of petitioner the aforesaid steamship, her master and officers, were allowed to sail on other courses than that designated by the charts of the United States Governemnt as safe and usual for ships known as Transatlantic Lines, which course had been approved by the French Government as correct and proper.

ELEVENTH.—That the above named claimants
287 have duly made and duly filed their claims with the Commissioner duly appointed herein to receive claims.

Wherefore the claimants pray that this Court will decree that the petitioner is not entitled to the relief prayed for in the petition, and that the claimants may be awarded their damages as indicated by the claims heretofore filed, together with interest and costs, and may have such other and further relief as may be just.

A. GORDON MURRAY,
HUNT, HILL & BETTS,
Proctors for Claimants.

288 Southern District of New York, ss.:

A. GORDON MURRAY, being duly sworn, says: That he is proctor for the above named claimants W. C. Perry, administrator of the estates of Kate M. Perry and Sadie Perry, deceased, and John Perry, father and next of kin of the infants Katherine Perry and Albert Perry, deceased; that the said claimants are absent from this district, and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimants herein and is acquainted with the facts; that he

has read the foregoing answer, and knows the contents thereof, and the matters therein stated are true to the best of his knowledge, information and belief; that deponent's means of information are letters from claimants and communications and papers in his possession, which he believes to be true. 289

A. GORDON MURRAY.

Sworn to before me this 28th day of August, 1900.
[SEAL.] JOHN E. ROESER,
Notary Public, N. Y. Co.

290

Southern District of New York, ss.:

GEO. WHITEFIELD BETTS, Jr., being duly sworn, says that he is a member of the firm of Hunt, Hill and Betts, having a place of business at No. 120 Broadway, New York, Proctors for the above named claimant, W. C. Perry, administrator of the estate of Florence Perry, deceased; that the said claimant is absent from this district, and more than a hundred miles from the City of New York, and deponent is authorized to act for said claimant herein, and is acquainted with the facts; that he has read the foregoing answer, and knows the contents thereof, and the matters therein stated are true to the 291
best of his knowledge, information and belief; that deponent's means of information are letters from claimant and communications and papers in his possession, which he believes to be true.

GEO. WHITEFIELD BETTS, JR.

Sworn to before me this 1st day of September, 1900.
[SEAL.] JUSTUS P. SHEFFIELD,
Notary Public No. 189,
New York County.

292 Southern District of New York, ss.:

PAULINE HENUY, being duly sworn, says that she is one of the above named claimants and that the foregoing answer is true of her own knowledge except as to matters therein stated to be alleged on information and belief and as to those matters she believes it to be true.

PAULINE HENUY.

Sworn to before me this 28th day of August, 1900.

[SEAL.] JOHN E. ROESER,
Notary Public N. Y. Co.

293

INTERROGATORIES.

FIRST.—State the names of the directors and officers of La Compagnie Generale Transatlantique in July, 1898, and the duties of the said officers, and how long said officers and directors had then held office.

No objection. Allowed.

SECOND.—(*a*) What were the rules and regulations promulgated by the company for the guidance of the masters and officers of its vessels on voyages from Havre to New York and return in July,
294 1898, *as respects courses, speed in fog and collisions?*

Allowed.

(*b*) Annex to your answer a true copy of said Rules or Regulations then in force *as respects the above points.*

Allowed.

(*c*) Were the master and/or officers of *La Bourgogne* furnished with a copy or copies of such Rules and Regulations when she left Havre for New York

in June, 1898? State the facts fully. Were they so furnished when she left New York on or about July 2, 1898? 295

Allowed.

(*d*) In particular, what were the provisions of such Rules or Regulations with regard to the course which *La Bourgogne* was to follow from New York to Havre in July, 1898, and with regard to speed in fog; state the facts fully if not already answered?

Disallowed as put.

THIRD.—(*a*) Is it not true that in the Spring or early Summer of 1898 the company received information or was aware of statements in Havre and in Paris, France, that the late Captain Deloncle, last master of *La Bourgogne*, was in a state of extreme distress of mind tending to impair his capacity as master? 296

Modified and allowed.

(*b*) What investigation was made by the company, if any, with regard to any such statements or information?

Allowed.

FOURTH.—State the number of passengers, and the number of the crew, and the total number of persons on board *La Bourgogne* when she left New York on or about July 2nd, 1898. 297

Allowed, but need not be answered if claim of privilege is made as per order.

FIFTH.—State the number, size and capacity of the life boats and life rafts carried by the *Bourgogne* on her voyage from New York on or about July 2d, 1898, and how long had she had that

298 number on board, and had the same been increased or diminished any within the six months preceding July 2d, 1898? If yea, in what respects? State the details and dates fully.

Allowed, but need not be answered if claim of privilege is made as per order.

SIXTH.—What apparatus was supplied for the lowering of said boats, and how long had same been in use before the loss of the *Bourgogne?*

Allowed, but need not be answered if claim of privilege is made as per order.

299 SEVENTH.—(*a*) With what charts was *La Bourgogne* furnished in June and July, 1898? State the facts so far as you know.

Allowed.

(*b*) Was she furnished with French charts or United States charts or both for the ocean voyage as distinguished from the coast and harbor waters?

Allowed.

EIGHTH.—Did such charts designate the courses to be followed by steamers crossing the Atlantic, and did such United States and French charts desig-
300 nate the same course for east-bound steamships, and if not, in what respects did they differ? Describe such charts, giving their numbers, dates, names, by whom published, and any other means of identification *so far as you know.*

Allowed.

NINTH.—(*a*) At the time of the collision between *La Bourgogne* and the *Cromartyshire* was *La Bourgogne* following the course required by the instructions, rules or regulations of the company?

Allowed.

(*b*) Was she then following the course required by the laws of France? State the facts fully so far as you know. 301

Allowed.

TENTH.—When previous to her loss was the last examination or survey made of *La Bourgogne*, her tackle, boats and equipment by the company, or its officers, and by what persons was it made?

Allowed.

ELEVENTH.—What was the number of the voyage on the books of the petitioner on which the loss of *La Bourgogne* occurred, and at what port did such voyage so numbered begin and end? 302

Allowed.

TWELFTH.—(*a*) Was there not in force in July, 1898, an agreement between the company and the French Government whereby the company received, or was receiving, a money compensation for certain services performed?

Allowed.

(*b*) Was such agreement in writing? If so, annex a copy to your answer or state it in full, and if not, in writing state the substance thereof. 303

Allowed.

(*c*) If it was a statute, decree or other Act of Government, annex a true copy of same to your answer hereto or state it fully.

Allowed.

THIRTEENTH.—(*a*) Was such compensation from the French Government received for carrying the mails on the company's steamers?

Allowed.

304 (*b*) What was the compensation received, and was it figured on the basis of a yearly allowance or so much per voyage, or on what basis?

Allowed.

(*c*) Did not such compensation and agreement provide for fifty-two voyages per year from Havre to New York and back to Havre?

Allowed.

FOURTEENTH.—(*a*) What was the amount of passage money collected by the company from the passengers who sailed from New York on *La Bourgogne* on or about July 2nd, 1898, and from the
305 passengers who sailed from Havre on *La Bourgogne* on or about June 18th, 1898? Has any of such passage money been refunded; if yea, what amounts and to what persons?

Allowed.

(*b*) What was the number of said voyage?

Allowed.

FIFTEENTH.—What was the amount of freight collected by the company at New York on the cargo carried from New York by *La Bourgogne* on or about July 2d, 1898, and collected by the company on the cargo carried by *La Bourgogne* from
306 Havre to New York, leaving Havre about June 18th, 1898? Has any of such freight been refunded; if yea, to what persons and what amounts?

Allowed.

SIXTEENTH.—State in detail what cargo was carried by *La Bourgogne* when she left New York on July 2d, 1898, and when she left Havre about June 18th, 1898?

Disallowed.

SEVENTEENTH.—(*a*) What is the situation of Thomas Law & Company, owners of the *Cromartyshire,* against the petitioner brought in the High Court of Justice in England, and set forth in the seventh article of the petition. 307

Disallowed.

(*b*) Is said suit still pending, or is it settled, or has final judgment been entered? If the latter, for what?

Disallowed.

(*c*) Has the petitioner paid any of the amount claimed therein? If yea, how much.

Disallowed. 308

A. BROWN.

(Endorsed)—Answer of W. C. Perry, Admr. John Perry and Pauline Henuy, Admx.—Filed Sept. 1, 1900.—Interrogatories settled, A. B., Oct. 31, 1900.

TO THE HONORABLE ADDISON BROWN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The answer of Henry Hyer Knowles, administrator of the estate of Gertrude Lalla Rookh Knowles, deceased, to the libel and petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne,* for limitation of liability and other relief, alleges as follows: 309

FIRST.—He admits the allegations of the First Article of the petition.

SECOND.—He admits the allegations of the Second Article thereof.

310 THIRD.—He admits that on Saturday, July 2nd, 1898, the steamship *La Bourgogne* departed from the Port of New York with merchandise and passengers, and that she was bound to Havre, and that she was on one of her regular voyages.

FOURTH.—As to the allegations of the Fourth Article, he has no personal knowledge, but is informed and believes that on the morning of July 4th, 1898, the *Bourgogne* was about sixty miles south of Sable Island, and that a dense fog prevailed, and that a collision there occurred between the *Bourgogne* and the ship *Cromartyshire*, as a re-
311 sult of which the *Bourgogne* was sunk. And as to all the other allegations of said Fourth Article he has no knowledge or information sufficient to form a belief and therefore denies the same.

FIFTH.—He denies that, as alleged in the Fifth Article, the said collision was not caused by fault or negligence of the said *Bourgogne* or her officers and men in charge of her navigation, and he alleges that the same was caused by negligence on the part of the said steamer and of those in charge of her navigation and of the petitioner, as will be hereafter stated. And as to the allegations of said Fifth
312 Article with reference to the fault and negligence of the *Cromartyshire*, he has no knowledge and therefore he denies the same and leaves the petitioner to the proof thereof.

SIXTH.—He denies that the loss, damage or injury caused by said collision was without the privity or knowledge of the petitioner or was without fault or negligence on the part of those in charge of the navigation of the *Bourgogne*.

SEVENTH.—He admits that claims have been made and suits brought against the petitioner to

recover damages caused by said collision, but 313
whether the list of suits and claims stated in the Seventh Article of the petition is correct he has no sufficient knowledge and therefore he denies the allegations in relation thereto and leaves the petitioner to the proof thereof.

EIGHTH.—He denies that the *Bourgogne* and her cargo and her pending freight were totally lost, and he denies that by reason of any such loss the liability of the petitioner or the amount or value of the petitioner's interest in the vessel and her pending freight or of the petitioner's interest as owner of such vessel and her pending freight is or amounts 314
to nothing except the value of the life-boat and life-raft in said petition mentioned.

NINTH.—He denies the matters alleged in the Tenth Article of the petition.

TENTH.—And this claimant, for a further answer and defense to the petition, alleges that the petitioner is not entitled to any limitation of its liability as prayed for by reason of the following facts, which, on information and belief, he alleges, viz.:

1. The said collision was caused by fault and 315
negligence on the part of those navigating said steamer and also on the part of the petitioner, in that the said steamer was being navigated by those in charge of her navigation in a manner forbidden by law. And furthermore that the petitioner had never made any proper regulations for giving to the commanders of its vessels or to the commander of the *Bourgogne* any directions such as would ensure that the navigation of the steamers belonging to it and the navigation of the *Bourgogne* should be conducted in accordance with law and prudently under

316 the circumstances under which she was being navigated.

2. That the said petitioner was required and in duty bound to have the said steamer *Bourgogne* fully fitted, manned and equipped when she sailed from the Port of New York in all respects as was required by the laws of the United States in respect to steamers carrying passengers and sailing from a port of the United States, but that the said petitioner had not complied with the provisions of said laws, and that the said steamer was not provided when she sailed from New York with water-
317 tight bulkheads or with boats or with boat-disengaging apparatus such as she was by the laws of the United States required to be furnished with.

3. That the petitioner has not complied with the provisions of the statutes of the United States and the rules of the Supreme Court in reference to the obtaining of a limitation of its liability and that it has not surrendered the said vessel or its interest therein or the freight pending or its interest therein, and has not put the same or any part thereof within the jurisdiction of the Court or made any conveyance of its title thereto in this proceeding or for the purposes of this suit, and in that it has received
318 large amounts of freight and of passage money for this voyage which it has retained in its own possession and has refused to put in the jurisdiction of the Court, allegiag untruly that the same has been wholly lost and is nothing.

And in that it has received from the French Government a large amount of money as a subvention or subsidy for said voyage of said steamer, which money the claimant alleges to be properly included as a part of the pending freight, which amount of money petitioner has retained in its own possession and has not delivered to the jurisdiction

of this Court or offered to so deliver the same, but it has untruly alleged that all the pending freight of said vessel for said voyage was totally lost. 319

ELEVENTH.—That the above-named claimant has duly made and duly filed his claim with the Commissioner duly appointed herein to receive claims.

Wherefore, this claimant prays that the petition herein may be dismissed with costs, and that this claimant may be awarded his damages as indicated by the claim heretofore filed and may have such other and further relief as may be just.

ALEXANDER & COLBY,
[SEAL.] Proctors for Claimant. 320

Northern District of Illinois, ss:

HENRY HYER KNOWLES, being duly sworn, deposes and says: That the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

HENRY HYER KNOWLES.

Sworn to before me this eighth day of September, 1900.

MARK A. FOOTE, 321
United States Commissioner
[SEAL.] for the Northern District of Illinois.

(Endorsed)—Answer of Henry Hyer Knowles as Administrator, &c., Claimants.—Filed Sept. 12, 1900.

322 TO THE HONORABLE ADDISON BROWN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

The answer of Louis Delfonti and Enrico Cirri to the libel and petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for limitation of liability and other relief, alleges as follows:

FIRST.—They admit the allegations of the first article of the petition.

SECOND.—They admit the allegations of the sec-
323 ond article thereof.

THIRD.—They admit that on Saturday, July 2d, 1898, the steamship *La Bourgogne* departed from New York with merchandise and passengers, and that she was bound to Havre, and that she was on one of her regular voyages.

FOURTH.—As to the allegations of the fourth articles, they have no personal knowledge, but they are informed and believe that on the morning of July 4th, 1898, the *Bourgogne* was about sixty miles south of Sable Island, and that a dense fog prevailed, and that a collision there occurred be-
324 tween the *Bourgogne* and the ship *Cromartyshire*, as a result of which the *Bourgogne* was sunk. And as to all the other allegations of said fourth article they have no knowledge or information sufficient to form a belief, and therefore deny the same.

FIFTH.—They deny that, as alleged in the fifth article, the said collision was not caused by fault or negligence of the said *Bourgogne* or her officers and men in charge of her navigation, and they allege that the same was caused by negligence on the

part of the said steamer, and of those in charge of her navigation, and of the petitioner, as will be hereafter stated. And as to the allegations of said fifth article with reference to the fault and negligence of the *Cromartyshire*, they have no knowledge and therefore they deny the same, and leave the petitioner to the proof thereof. 325

SIXTH.—They deny that the loss, damage or injury caused by said collision was without the privity or knowledge of the petitioner, or was without fault or negligence on the part of those in charge of the navigation of the *Bourgogne*.

326

SEVENTH.—They admit that claims have been made and suits brought against the petitioner to recover damages caused by said collision, but whether the lists of suits and claims stated in the seventh article of the petition is correct, they have no sufficient knowledge, and therefore they deny the allegations in relation thereto, and leave the petitioner to the proof thereof.

EIGHTH.—They deny that the *Bourgogne* and her cargo and her pending freight were totally lost, and they deny that by reason of any such loss, the liability of the petitioner or the amount or value of the petitioner's interest in the vessel and her pending freight is or amounts to nothing except the value of the life-boat and life-raft in said petition mentioned. 327

NINTH.—They deny the matters alleged in the tenth article of the petition.

TENTH.—And these claimants for a further answer and defense to the petition allege that the petitioner is not entitled to any limitation of lia-

328 bility as prayed for by reason of the following facts, which, on information and belief, they allege, viz.:

1. The said collision was caused by fault and negligence on the part of those navigating said steamer, and also on the part of the petitioner, and that the said steamer was being navigated by those in charge of her navigation in a manner forbidden by law. And furthermore that the petitioner had never made any proper regulations for giving to the commanders of its vessels, or to the commander of the *Bourgogne*, any direction such as would ensure that the navigation of the steamers belonging to it and the navigation of the *Bourgogne* should
329 be conducted in accordance with law and prudently under the circumstances under which she was being navigated.

2. That the said petitioner was required and in duty bound to have the said steamer *Bourgogne* fully fitted, manned and equipped when she sailed from the Port of New York, in all respects as was required by the laws of the United States in respect to steamers carrying passengers and sailing from a port of the United States, but that the said petitioner had not complied with the provisions of said laws, and the said steamer was not provided when she sailed from New York with water-tight
330 bulkheads, or with boats, or with boat-disengaging apparatus such as she was by the laws of the United States required to be furnished with.

3. That the petitioner has not complied with the provisions of the statutes of the United States and the rules of the Supreme Court in reference to the obtaining of a limitation of liability, and that it has not surrendered the said vessel or its interests therein, and has not put the same or any part thereof within the jurisdiction of the Court, or made any conveyance of its title thereto in this pro-

ceeding, or for the purposes of this suit, and in that 331
it has received large amount of freights, and of passage money, for this voyage, which it has retained in its own possession, and has refused to put in the jurisdiction of the Court, alleging untruly that the same has been wholly lost, and is nothing.

And in that it has received from the French Government a large amount of money as a subvention of subsidy for said voyage of said steamer, which money the claimants allege to be properly included as a part of the pending freight, which amount of money the petitioner has retained in its own possession and has not delivered to the jurisdiction of this Court, or offered to so deliver the 332
same, but it has untruly alleged that all the pending freight of the said vessel for said voyage was totally lost.

ELEVENTH.—That the above-named claimants have duly made and duly filed their claims with the Commissioner duly appointed herein to receive claims.

Wherefore, the claimants pray that the petition herein be dismissed with costs, and that the claimants be awarded their damages as indicated by the claims heretofore filed, and may have such other and further relief as may be just. 333

BULLOWA & BULLOWA,
Proctors for Claimants,
31 Nassau Street,
New York City.

Southern District of New York, ss.:

ALFRED L. M. BULLOWA, being duly sworn, says that he is one of the proctors for Louis Delfonti and Enrica Cirri, and that the foregoing answer is true to his own knowledge, except as to the matters therein stated to be alleged on information and be-

334 lief, and as to these matters he believes them to be true. That deponent makes this verification because said claimants are not within this District or State, nor within one hundred miles thereof. That the grounds of deponent's knowledge and belief are letters received from and conversations with claimants and a general knowledge of the whole proceeding.

ALFRED L. M. BULLOWA. [L. S.]

Sworn to before me this 31st day of August, 1900.

ALBERT S. MEYER,
Notary Public,
N. Y. Co.

335

INTERROGATORIES.

FIRST.—When was the Compagnie Generale Transatlantique incorporated?

SECOND.—What have been and are the principal officers of that corporation? What were the names of the persons who held such offices in the summer of 1898, and how long had each of them held such office?

336

THIRD.—By what were the duties of each of said officers fixed and determined?

If such duties, or any of them, were prescribed by any incorporation of the company, or by any by-law, or regulation adopted, or any vote passed by said company or the directors thereof, annex to your answer a copy of such incorporation, by-law, regulation or vote.

FOURTH.—Was there not an agreement between the petitioner and the Government of France or

some department or officer of said Government in existence in July, 1898, in relation to the navigation of said steamer *La Bourgogne*, and the other steamer of the petitioner herein, which ran between the Port of Le Havre and the Port of New York? 337

If there was, annex to your answer a copy of such agreement and of any law of France or ministerial order under and by virtue of which such agreement was made.

FIFTH.—When, with reference to the terms of such agreement did the year begin and expire in the course of which the voyage of the *Bourgogne* occurred, in the course of which she was sunk? 338

What amount of money did the petitioner receive under said agreement for services rendered under said agreement during said year? And what was the amount of money received during the year previous and the year subsequent to that year?

SIXTH.—Was not the amount which was to be received by the petitioner under said agreement affected, so as to be increased or diminished, if the average speed made by any of its steamers running between Le Havre and New York, was increased or diminished? 339

And was not the average speed for each voyage of each steamer therefore calculated from the speed run by each steamer as shown by the log of each voyage?

SEVENTH.—Was not the log of each steamer for each voyage examined in order that the petitioner herein, or some of its officers, might know what had been the average speed of such steamer for each voyage?

340 EIGHTH.—Was not each of said steamer's voyage numbered? What was the number of the voyage of the *Bourgogne* on which she was lost? And was not each sailing of each steamer from Havre to New York and back to Havre treated as and called one voyage? Were not the accounts of each such voyage from Havre to New York and back to Havre kept separate from the accounts of the other voyages?

NINTH.—Were not regulations prepared on behalf of said company, and by it delivered in a printed form to each of its captains of steamers
341 sailing between New York and Havre?

TENTH.—What was the name of the captain of the *Bourgogne* who commanded her on her last voyage? And was not a copy of the regulations referred to in the last interrogatory furnished to him by the petitioner?

ELEVENTH.—Was not the Article 395 of such regulations the regulation furnished by the petitioner to its captains sailing between New York and Havre as to the navigation to be observed by him during foggy weather?

342 Annex to your answer a copy of such Article 395, or if you say that said Article 395 was not the regulation furnished as above, then annex to your answer a copy of any other regulation furnished by the petitioner to its captains in relation to that matter.

TWELFTH.—Did not the petitioner have insurance on the said steamer *Bourgogne* at and before the time of her loss? If so, to what amount and who were the insurers? Has any of such insurance been paid, and, if so, by whom? Give the

amount insured by each insurer and the amount paid by each insurer. 343

THIRTEENTH.—Was any abandonment of the *Bourgogne* after her loss made by the petitioner to any insurer of her?

FOURTEENTH.—Was any abandonment of any kind made by the Compagnie Generale Transatlantique, the owner of the *Bourgogne,* whereby the said owner abandoned the *Bourgogne* and her freight for the purpose of freeing itself from liability by reason of the collision and loss of the *Bourgogne,* referred to in the petition herein? 344

If there was, annex to your answer hereto a copy of such abandonment.

FIFTEENTH.—Was not a suit brought before the Admiralty Court of England on behalf of the owners of the ship *Cromartyshire* against the petitioner herein to recover the damages occasioned to the *Cromartyshire* by the collision with the *Bourgogne,* which occasioned the loss of the *Bourgogne?* And did not such suit result finally in a decree that the petitioner should pay such damages to the said owners of the said *Cromartyshire?*

And have not such damages so decreed been paid by the petitioner? If they have been, what has been the amount thus paid? If they have not been paid, what is the present position of such suit above referred to? 345

SIXTEENTH.—Was there not at the times mentioned in the libel an arrangement between petitioner and the commanders of its steamers running between New York and Havre whereby it became to the personal profit of a commander of a ship of the Compagnie Generale Transatlantique to make a

346 speedy voyage, and to his personal loss if the voyage was delayed?

(Endorsed)—Answer.—Filed Sept. 4, 1900.

TO THE HONORABLE ADDISON BROWN, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK:

The answer of Josephine M. Chanut, as executrix under the last will and testament of Jean Chanut, to the libel and petition of the La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for limitation of liability and other
347 relief, alleges as follows:

FIRST.—She admits the allegations of the first article of the petition.

SECOND.—She admits the allegations of the second article thereof.

THIRD.—She admits that on Saturday, July 2, 1898, the steamship *La Bourgogne* departed from New York with merchandise and passengers, and that said steamship was bound to Havre and was on one of her regular voyages.

348 FOURTH.—As to the allegations of the fourth article, she has no personal knowledge, but she is informed and believes that, on the morning of July 4, 1898, the *Bourgogne* was about sixty miles south of Sable Island, and that a dense fog prevailed and that a collision there occurred between the *Bourgogne* and the ship *Cromartyshire*, as a result of which the *Bourgogne* was sunk. And as to all the other allegations of said fourth article, she has no knowledge or information sufficient to form a belief, and therefore denies the same.

FIFTH.—She denies that, as alleged in the fifth article, the said collison was not caused by fault or negligence of the said *Bourgogne* or her officers and men in charge of her navigation, and she alleges that the same was caused by negligence on the part of the said steamer and of those in charge of her navigation and of the petitioner, as will be hereafter stated. And as to the allegations of said fifth article with reference to the fault and negligence of the *Cromartyshire*, she has no knowledge, and therefore she denies the same, and leaves the petitioner to the proof thereof. 349

SIXTH.—She denies that the loss, damage or injury caused by said collision was without the privity or knowledge of the petitioner, or was without fault or negligence on the part of those in charge of the navigation of the *Bourgogne*. 350

SEVENTH.—She admits that claims have been made and suits brought against the petitioner, including one on behalf of the respondent, to recover damages caused by said collision, but whether the list of suits and claims stated in the seventh article of the petition is correct, she has no sufficient knowledge, and therefore she denies the allegations in relation thereto, and leaves the petitioner to the proof thereof. 351

EIGHTH.—She denies that the *Bourgogne* and her cargo and her pending freight were totally lost, and she denies that by reason of any such loss the liability of the petitioner or the amount or value of the petitioner's interest in the vessel and her pending freight or of the petitioner's interest as owner of such vessel and her pending freight is or amounts to nothing, except the value of the life-boat and life-raft in said petition.

352 NINTH.—She has no knowledge as to the allegations of the ninth article, and denies the matters alleged in the tenth article of the petition.

TENTH.—And his claimant, for a further answer and defense to the petition, alleges that the petitioner is not entitled to any limitation of its liability as prayed for by reason of the following facts, which, on information and belief, she alleges, viz.:

1. The said collision was caused by fault and negligence on the part of those navigating said steamer, and also on the part of the petitioner, in
353 that the said steamer was being navigated by those in charge of her navigation in a manner forbidden by law. And, furthermore, the petitioner had never made any proper regulations for giving to the commanders of its vessels or to the commander of the *Bourgogne* any directions such as would ensure that the navigation of the steamers belonging to it and the navigation of the *Bourgogne* should be conducted in accordance with the law, and prudently under the circumstances under which she was being navigated.

2. That the said petitioner was required and in duty bound to have the said steamer *Bourgogne*
354 fully fitted, manned and equipped when she sailed from the Port of New York, in all respects as was required by the laws of the United States in respect to steamers carrying passengers and sailing from a port of the United States, but that the said petitioner had not complied with the provisions of said laws, and that the said steamer was not provided when she sailed from New York with watertight bulkheads, or with boats or with boat-disengaging apparatus, such as she was by the laws of the United States required to be furnished with.

3. That the petitioner has not complied with the 355
provisions of the statutes of the United States and the rules of the Supreme Court in reference to the obtaining of a limitation of its liability, and that it has not surrendered the said vessel or its interest therein, or the freight pending, or its interest therein, and has not put the same or any part thereof within the jurisdiction of the Court, or made any conveyance of its title thereto in this proceeding, or for the purposes of this suit, and in that it has received large amounts of freight, and of passage money for this voyage, which it has retained in its own possession, and has refused to put in the jurisdiction of the Court, alleging, untruly, that the 356
same has been wholly lost, and is nothing.

And in that it has received from the French Government a large amount of money as a subvention or subsidy for said voyage of said steamer, which money the claimant alleges to be properly included as part of the freight, which amount of money the petitioner has retained in its own possession and has not delivered to the jurisdiction of this Court or offered to so deliver the same, but it has untruly alleged that all the pending freight of said vessel for said voyage was totally lost.

ELEVENTH.—That the above-entitled claimant 357
has duly made and duly filed her claims with the Commissioner duly appointed herein to receive claims.

Wherefore, the claimant prays that the petition herein may be dismissed with costs, and that the claimant may be awarded her damages, as indicated by the claim heretofore filed, and may have such other and further relief as may be just.

JUDSON G. WELLS,
Proctor for Claimant.

358 Southern District of New York, ss.:

JOSEPHINE M. CHANUT, being duly sworn, deposes and says that the foregoing answer is true of her own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters, she believes it to be true.

JOSEPHINE M. CHANUT.

Sworn to before me this 8th day of December, 1900.

FRANK J. SHARKEY,
Notary Public,
N. Y. Co.

[SEAL.]

359

INTERROGATORIES PROPOUNDED TO LIBELLANT, AS TO WHICH ITS PERSONAL ANSWERS ARE REQUIRED UPON OATH OR SOLEMN AFFIRMATION.

FIRST.—When was the Compagnie General Transatlantique incorporated?

SECOND.—What have been and are the principal officers of that corporation? What were the names of the persons who held such offices in the Summer of 1898, and how long had each of them held such office?

360

THIRD.—By what were the duties of each of said officers fixed and determined? If such duties, or any of them, were prescribed by any corporation of the Company, or by any By-Law or Regulation adopted, or any vote passed by said Company or the Directors thereof, annex to your answer a copy of such incorporation by law, regulation or vote.

FOURTH.—Was there not an agreement between the petitioner and the Government of France, or

some Department or Officer of said Government, in existence in July, 1898, in relation to the navigation of said steamer *Bourgogne*, and the other steamers of the Petitioner herein which ran between the ports of Le Havre and New York? 361

If there was, annex to your answer a copy of such agreement and of any law of France or Ministerial Order under and by virtue of which such agreement was made.

FIFTH.—When, with reference to the terms of such agreement, did the year begin and expire in the course of which the voyage of the *Bourgogne* occurred, in the course of which she sunk? 362

What amount of money did the petitioner receive under such agreement for services rendered under such agreement during said year? And what was the amount received during the year previous and the year subsequent to that year?

SIXTH.—Was not the amount which was to be received by the petitioner under said agreement affected, so as to be increased or diminished, if the average speed made by any of its steamers running between Le Havre and New York, was increased or diminished?

And was not the average speed of each steamer for each voyage, therefore, calculated from the speed run by each steamer, as shown by the log of each voyage? 363

SEVENTH.—Was not the log of each steamer for each voyage examined, in order that the petitioner herein or some of its officers, might know what had been the average speed of such steamer for each voyage?

EIGHTH.—Was not each voyage of each of said steamers numbered? What was the number of the

voyage of the *Bourgogne* on which she was lost? And was not each sailing of each steamer from Havre to New York and back to Havre treated as and called one voyage? Were not the accounts of each such voyage from Havre to New York and back to Havre kept separate from the accounts of the other voyage?

NINTH.—Were not regulations prepared on behalf of said Company and by it delivered in a printed form to each of its captains of steamers sailing between New York and Havre?

TENTH.—What was the name of the Captain of the *Bourgogne* who commanded her on her last voyage? And was not a copy of the Regulations referred to in the last interrogatory furnished to him by the petitioner?

ELEVENTH.—Was not Article 395 of such regulations the regulation furnished by the petitioner to its Captains sailing between New York and Havre, as to the navigation to be observed by him during foggy weather?

Annex to your answer a copy of such Article 395, or if you say that said Article 395 was not the regulation furnished as above, then annex to your answer a copy of any other regulation furnished by the petitioner to its Captains in relation to that matter.

TWELFTH.—Did not the petitioner have insurance on the said steamer *Bourgogne* at and before the time of her loss? If so, to what amount and who were the insurers? Has any of such insurance been paid, and if so, by whom. Give the amount insured by each insurer and the amount paid by each insurer.

THIRTEENTH.—Was any abandonment of the *Bourgogne* after her loss made by the petitioner to any insurer of her? 367

FOURTEENTH.—Was any abandonment of any kind made by the Compagnie Generale Transatlantique, the owner of the *Bourgogne*, whereby the said owner abandoned the *Bourgogne* and her freight, for the purpose of freeing itself from liability by reason of the collision and loss of the *Bourgogne* referred to in the petition herein? If there was, annex to your answers hereto a copy of such abandonment.

FIFTEENTH.—Was not a suit brought before the Admiralty Court of England on behalf of the owners of the ship *Cromartyshire* against the petitioner herein, to recover the damages occasioned by the *Cromartyshire* by the collision with the *Bourgogne*, which occasioned the loss of the *Bourgogne?* And did not such suit result finally in a decree that the petitioner should pay such damages to the said owners of the *Cromartyshire?* 368

And have not such damages so decreed been paid by the petitioner? If they have been, what has been the amount thus paid? If they have not been paid, what is the present position of such suit above referred to?

369

SIXTEENTH.—Was there not at the times mentioned in the libel, an arrangement between the petitioner and the commanders of its steamers running between New York and Havre, whereby it became to the personal profit of a commander of a ship of the Compagnie Generale Transatlantique to make a speedy voyage, and to his personal loss if the voyage was delayed

JUDSON G. WELLS,
Proctor for Claimant.

Endorsed—Answer.—Filed Dec. 10, 1902.

370 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
371 of liability and other relief.

EXCEPTIONS OF THE ABOVE-NAMED PETITIONER TO THE INTERROGATORIES ANNEXED TO THE ANSWER OF GEORGE DESLIONS, ADRIAN HUMMEL, IRENE CESERE, ADMINISTRATRIX OF GIUSEPEE CESERE, ANTONIO MOLINARI AND CHARLES RABELLI TO THE LIBEL AND PETITION HEREIN.

FIRST.—The petitioner excepts to all of the said interrogatories annexed to the answer, on the ground that the same are framed in supposed support of allegations in the answer, which, if true,
372 would or might tend to expose the petitioner to a penalty or forfeiture.

SECOND.—The petitioner excepts to all the interrogatories annexed to the said answer on the ground that the same are immaterial and irrelevant.

THIRD.—The petitioner excepts to so much of the Second Interrogatory as inquires as to who have been the principal officers of La Compagnie Generale Transatlantique on the ground that the same is immaterial and irrelevant.

FOURTH.—The petitioner excepts to the Fourth Interrogatory and to the first clause of the Fifth Interrogatory on the ground that the same are vague and indefinite and do not sufficiently apprise the petitioner of the nature of the agreement referred to. 373

FIFTH.—The petitioner excepts to the second clause of the Fifth Interrogatory which inquires in regard to the amount of money received by the petitioner under a supposed agreement, on the ground that the same is vague and uncertain, and also immaterial and irrelevant.

374

SIXTH.—The petitioner excepts to the Sixth Interrogatory on the ground that the same is vague and uncertain, and also immaterial and irrelevant.

SEVENTH.—The petitioner excepts to the Seventh Interrogatory on the ground that the same is vague and uncertain, and also immaterial and irrelevant.

EIGHTH.—The petitioner excepts to the Eighth, Ninth, Tenth, Eleventh, Twelfth, Thirteenth, Fourteenth, Fifteenth and Sixteenth Interrogatories (except so much of the Tenth Interrogatory as inquires the name of the Captain of the *Bourgogne* who commanded her on her last voyage) on the ground that the same are immaterial and irrelevant. 375

JONES & GOVIN,
Proctors for Petitioner.

Endorsed—Exceptions to answer of George Des Lions and others.—"See Opinion Oct. 31, 1900."—Filed Oct. 1, 1900.

376 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

377

Additional exceptions of the above-named petitioner to the interrogatories annexed to the answer of George Deslions, Adrian Hummel, Irene Cesere, Administratrix of Giuseppe Cesere, Antonio Molinari and Charles Rabelli to the libel and petition herein.

ADDITIONAL EXCEPTION.

The petitioner excepts to all of the said interrogatories annexed to the said answer on the ground that the several claims of the said claimants filed with the Commissioner herein do not show or exhibit any cause of action against the petitioner, and that all the said claims are vague, uncertain and wholly insufficient. And, furthermore, so far as each of the claims of the said George Deslions, Adrien Hummel, Antonio Molinari, Irene Cesere and Charles Rebelli for damages for alleged negligence resulting in death is concerned, no right or capacity to sue or file a claim is shown.

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JONES & GOVIN,
Proctors for Petitioner.

Endorsed—Additional exceptions to interrogatories of George Des Lions *et al.*—Filed Oct. 19, 1900.—"See Opinion Oct. 31, 1900."

DISTRICT COURT OF THE UNITED STATES, 379

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 380

EXCEPTION of the above-named petitioner to the joint answer and the interrogatories annexed thereto of W. C. Perry, Administrator of the Estate of Kate M. Perry, deceased; the Estate of Florence Perry, deceased; the Estate of Sadie Perry, deceased; and of John Perry, father and next of kin of the infants Katherine Perry and Albert Perry, deceased; and of Pauline Henuy, Administratrix of the Estate of Juliette Cicot, deceased, to the libel and petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for limitation of liability and other relief. 381

EXCEPTION AND MOTION TO STRIKE OUT ANSWER.

The petitioner excepts to the answer of the said claimants on the ground that no valid or sufficient claim in any of their behalf has been filed with the Commissioner appointed to receive claims in this cause, and on the further ground that the papers purporting to be claims on the part of the said claimants filed with the Commissioner, do not show

382 or exhibit any cause of action against the petitioner, and, furthermore, so far as the claims of the said W. C. Perry, as Administrator and as next of kin are concerned, no right to sue or file a claim is shown, and the petitioner, therefore, moves that the said answer and alleged claims be stricken from the files of the Court.

EXCEPTIONS TO INTERROGATORIES.

FIRST EXCEPTION. The petitioner excepts to all of the said interrogatories annexed to the said answer on the ground that the several claims of the said claimants filed with the Commissioner herein
383 do not show or exhibit any cause of action against the petitioner and that all the said claims are vague, uncertain and wholly insufficient, and, furthermore, so far as the claims of the said W. C. Perry, as Administrator and as next of kin are concerned, no right to sue or file a claim is shown.

SECOND EXCEPTION. The petitioner excepts also to all of the said interrogatories on the further ground that the same are framed in supposed support of allegations in the said answer, which, if true, would or might tend to expose the petitioner to a penalty or forfeiture.

384 THIRD EXCEPTION. The petitioner also excepts to all of the said interrogatories on the further ground that the same are not such as are permitted or allowed by the rules and practice of this Court in admiralty.

FOURTH EXCEPTION. The petitioner also excepts to all of the said interrogatories on the further ground that the same are vague, uncertain, indistinct, indefinite, immaterial and irrelevant, and the petitioner asks that this exception may be sustained with reference to any one or all of the said interrogatories and supported wherever applicable, al-

though the same may be overruled in respect of one or more of the said interrogatories. 385

(Signed) JONES & GOVIN,
Proctors for Petitioner.

(Signed) EDWARD K. JONES,
Advocate.

Endorsed—Exceptions, etc., to answers and interrogatories of W. C. Perry, as Administrator.—See Opinion Oct. 31, 1900.—A. B.—Filed Oct. 8, 1900.

UNITED STATES DISTRICT COURT, 386

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE, for Limitation of Liability, "LA BOURGOGNE."

387

IN ADMIRALTY. INTERROGATORIES. PRIVILEGE OF PARTY.

JONES & GOVIN, for Petitioner;
BENEDICT & BENEDICT, HUNT HILL & BETTS and A. GORDON MURRAY, for various damage claimants.

BROWN, *J.*—

Numerous persons who have made claims against the Compagnie Generale Transatlantique for loss

388 of property and life in the sinking of the steamer *La Bourgogne* by collision on a voyage from New York to Havre, in July, 1898, have answered the petition of the Company filed in this Court, for the purpose of limiting its liability for such losses, and to their answers have annexed numerous interrogatories addressed to petitioner, to which exceptions have been filed, on the ground that the petitioner is privileged from answering such interrogatories under Rule 31 and 32 of the Supreme Court in Admiralty, as likely to expose the petitioner to a penalty or forfeiture. A few of the interrogatories are clearly not subject to this exception, and the allow-
389 ance or modification of these is noted upon the papers.

I must, however, sustain the general ground of exception taken to some of the interrogatories, so far only as the subject referred to would, if proved, bring the petitioner within our statutes imposing penalties and forfeiture. The petitioner is not entitled to a limitation of liability under Section 4283, U. S. Rev. Stats., unless the loss or damage occurred "without the privity or knowledge" or the petitioner. But the mere loss of its right to a limitation of liability under this statute, through proof of "privity" with the cause of damage, would not be
390 of itself such a "forfeiture" as to exempt the petitioner from answering interrogatories, or from compulsory testimony as a witness. Exemption can only be based upon the liability to such penalties or forfeiture as may be the subjects of a penal or criminal proceeding (See Fifth Amendment U. S. Const., Sec. 860 U. S. Rev. Stats.).

In the two answers filed, which differ somewhat from each other, there are allegations that the loss was occasioned by the negligence of those in charge of *La Bourgogne*, and by the negligence of the petitioner; that her speed in fog was immoderate; that

she was navigated in a manner forbidden by law, 391
with a knowledge of the petitioner that she would be so navigated; that no proper regulations were given to the commander, or any such direction as would insure the navigation of the steamer in accordance with the law; that she was not fully manned or equipped as required by law; and that she was not provided with water tight bulkheads, or with boats, or with boat disengaging apparatus, as required by the law of the United States, on leaving New York.

It is further charged that the petitioner has not surrendered the "freight pending," that is, the freight and passage money on that voyage which it 392
is alleged the petitioner collected, but retained in possession, untruly stating in the petition that they were wholly lost.

It is also charged that the company had received from the French Government a subvention or subsidy for carrying the mails and for other services on this voyage, which the company has also retained and not submitted to the jurisdiction of the court. As the surrender of the vessel and the "freight pending" with all that is legally covered by those terms, is a condition of the petitioner's relief, the above charges in the answers present a material issue, and the interrogatories referring to 393
those latter points are allowed, though without now determining their legal effect when the facts are ascertained.

There are other interrogatories, referring to alleged negligence or misconduct in the management of the vessel, her speed, her course and the competency of her captain. Others still relate to the sufficiency of her equipment, her bulkheads, her small boats, and her boat disengaging apparatus, which are subject to the regulation of the United States statute. The latter, I think, fall within the

394 provisions of Rules 31 and 32, when considered in connection with these statutes and with the construction placed by the Supreme Court in the case of Counselman v. Hitchcock, 142 U. S., 547, upon the Fifth Amendment to the Constitution providing that "no person shall be compelled in a criminal case to be a witness against himself."

Section 4463 of the Revised Statutes requires that steamers carrying passengers shall have full and sufficient officers and crew; and Section 5344 declares that

"Every captain * * * by whose misconduct, negligence or inattention the life of any person is
395 destroyed and every *owner* * * * through whose knowledge, *connivance*, misconduct, or violation of law the life of any person is destroyed, shall be deemed guilty of manslaughter, etc."

But these two sections cited by the petitioner are not applicable to foreign vessels, as appears from the explanatory and declaratory act of August 7th, 1882 (1 Sup. Rev. Stat. 383-4; 22 Stats. at L. 346; see also 2 Rev. Supp. 398) by the acts last cited however, Sections 4488, 4489 and 4500 do apply to foreign private steam vessels carrying passengers; and these sections require such steamers to carry life boats, disengaging apparatus and water tight
396 bulkheads, as designated in those sections, and for failure to comply therewith penalties or forfeiture are imposed varying from $500 to $1,000.

The object of most of the interrogatories to which objection is made, is to prove that the petitioner, or its responsible officers, or superintendents, were in privity with the alleged negligence in violation of law, and in the language of Section 5344, *connived* at such violations and negligence, by which the loss and injury arose in consequence of which the petitioner is disabled from claiming the limitation of liability sought in this proceeding. The purpose of

the interrogatories is no doubt material and vital. 897
If established it will defeat the petitioner. But the evidence to sustain this defense cannot be forced from the petitioner itself, as against its claim of privilege, so far as relates to the subject matters that are embraced in the penal statutes above referred to. In the answer of Perry & al. numerous interrogatories were addressed directly to these very subjects, and to the petitioner itself; that is in effect, to its responsible officers, who, if the charges are true, would be liable to prosecution for the penalties and forfeitures thereby incurred. The petitioner itself cannot, therefore, be compelled to answer such interrogatories. Whether true or not, 898
the proof desired must be sought from other witnesses. Section 860 of the Revised Statutes, though it might prevent the evidence extracted from being used in any proceeding to punish the offense or to recover the penalty or forfeiture incurred, would not shield the petitioner from *prosecution* therefor; and therefore under the decision in Counselman v. Hitchcock, *supra*, it does not avoid the constitutional exemption and the exception here raised. See also *in re* Feldstein, 103 Fed. Rep., 369.

The charge of incompetency of the master, of negligence in management, immoderate speed, and improper course, and of the privity of the petitioner thereto, not being matters that could subject the 899
petitioner under our law to any penalty or forfeiture, are proper subjects for interrogatories, and as to these matters, they are allowed.

The original claims filed by the damage claimants sufficiently comply, as I find, with the rules of the court in such cases, and the exceptions founded on their supposed insufficiency are therefore overruled; and as both answers are in behalf of money damage claimants for the loss of property, the question whether damages for loss of life can also be recov-

400 ered is not material on this motion, and is not, therefore, considered.

October 31, 1900.

A. B.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Federal Building, in the City of New York, on the 2nd day of November, 1900.

401 Present—Hon. ADDISON BROWN, *District Judge.*

IN THE MATTER OF The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.	Order overruling Exceptions to Interrogatories in answer of Des Lions, *et al.*

402 The petitioner's exceptions to the interrogatories at the foot of the answers of George Deslions *& al.*, and coming on to be heard, Now, after hearing E. K. Jones, Esq., in support of such exceptions, and E. G. Benedict, Esq., in opposition thereto, and on motion of Benedict & Benedict, Proctors for the above named claimants,

Ordered that the said exceptions be and the same hereby are overruled except as the interrogatories are marked disallowed, and the petitioner is hereby directed to answer the allowed interrogatories within sixty days from the day of service of a copy of

this order on its proctors, such answers to be verified by the personal oath of one of the principal officers of the petitioner. 403

ADDISON BROWN.

Endorsed—Order overruling Exceptions to Interrogatories in Answer of Des Lions, *et al.*—Filed Nov. 3, 1900.

At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Rooms in the Federal Building in the City of New York, on the day of November, 1900. 404

Present—Hon. ADDISON BROWN, *District Judge.*

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 405

The petitioner's exceptions to the answer interposed herein in behalf of W. C. Perry, Administrator of John Perry, and of Pauline Henuy, Administratrix, and to the interrogatories annexed thereto, having come on to be heard, and after hearing Edward K. Jones, Esq., in support of said exceptions, and A. Gordon Murray, Esq., in opposition thereto, now on motion of Hunt, Hill & Betts, and A. Gor-

406 don Murray, proctors for the above-named claimants, it is hereby

Ordered that the Sixteenth and Seventeenth interrogatories be and the same are hereby disallowed.

And the petitioner's counsel having objected to the allowance of the Fourth, Fifth and Sixth interrogatories on the ground that the said interrogatories, among others, were framed in support of allegations in the answer, which, if true, would expose the petitioner to penalties and forfeitures, it is

Further ordered that the petitioner may decline to answer the said interrogatories if it shall elect
407 to claim the privilege of not answering on the above grounds. And it is

Further ordered that the petitioner shall answer the other interrogatories as modified by the Judge of this Court in the copy on file, within sixty days from the entry of this order, and that the said answers be verified by one of the principal officers of the petitioner.

ADDISON BROWN.

Endorsed—Order on Exceptions to Interrogatories of Perry and others.—Filed Nov. 12, 1900.

408

DISTRICT COURT OF THE UNITED STATES, 409

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

410

ANSWERS of La Compagnie Generale Transatlantique, the libellant and petitioner in the above entitled proceeding, to interrogatories propounded to it herein by George Deslions and others:

First Question: The company was founded with the authorization of the French Government, in accordance with an Act received by Maitre Fould and his colleague, Notaries of Paris, on the 24th and 26th of February, 1855, under the name of Compagnie Generale Maritime.

It was authorized afterwards, by Decree of August 25th, 1861, to assume the name of Compagnie Generale Transatlantique, and it was transformed into the Society Anonyme according to the terms of the Law of July 24th, 1867, in conformity with deliberations taken at an extraordinary meeting of the shareholders held December 20th, 1879, and by virtue of the Decree of April 24th, 1880. 411

Second Question: No. 1. In 1880 the company was managed by a Board of Directors composed of: Eugene Pereire, Pierre Theopile Cloquemin, Albert Ellissen, Louis Gautreau, Ed. Guerin de Litteau,

412 Baron de Herckeren, Lafarge, Salomon Halfon, Ernest Chabrier, Emile Pereire, Isaac Pereire.

Actually the Board of Directors is composed of: M. M. Eugene Pereire, President; Cloquemin, Vice-President; Cloquemin Son, Guerin de Litteau, Halfon Salomon, Delabre Jules, Marquis de Flers Raoul, Gavini de Campila, Gautreau, Gery, Baron Hely d'Oissel, Piot; L. Dorigny gl manager.

The principal Chiefs of Service in Paris in 1880 were: Mr. Besson, Chef du Service d'Exploitation; Mr. Audenet, Chef du Service Technique; Mr. de Bocande (father), Chef du Service Commercial.

At Havre: Mr. Macquin, Engineer; Mr. Vial,
413 Agent of the company

Actually they are: At Paris: Mr. Simon, Chef du Service d'Exploitation; Mr. Daymard, Chef du Service Technique; Mr. Fumery, Chef du Service d'Atlantique (Sub-division du Service Commercial).

At Havre: Mr. Bayssellance, Engineer; Mr. Boyer, Agent of the company.

No. 2. At Paris: Mr. de Jousselin was Chef du Service d'Exploitation (to-day Service de l'Armement). Since 1890 Mr. Daymard was Chef du Service Technique since 1884; Mr. Fumery, Chef du Service d'Atlantique (Sub-division du Service Commercial) since the month of December, 1897.

At Havre: Mr. Lannes, Engineer of the company
414 since 1894; Mr. Vie, Agent of the company since 1895.

Third Question: No. 1. By the Council of Administration (Board of Directors). No. 2. No answer.

Fourth Question: Yes. We annex to our answer a pamphlet including the Law of the 24th of June, 1883, concerning the Postal Maritime Service between Havre and New York and conditions of contract for the exploitation of the service.

Fifth Question: No. 1. The year has begun on

The adjudication is to be made in two lots; that 421
is to say,

First Lot, Service from Havre to New York;

Second Lot, Service of the Antilles and Mexico.

Art. 2.—The services shall comprehend first a weekly line from Havre to New York. * * *

Art. 3.—No one shall be admitted to compete to the offer, unless he shall have been first approved by the commission which shall be instituted for that purpose by the decree.

Art. 4.—During the ten days which shall follow 422
the adjudication there may be deposited offers of reductions on the prices resulting from the adjudication of each of these lots separately. This reduction must be five per cent. at least.

Steps shall be taken for a readjudication for each of the lots separately between the first party to whom they are adjudicated, and the author or authors of the offers of reduction, provided that these last shall have before their offers taken part in the first adjudication.

Art. 5.—The steamers for the service from Havre to New York must realize an annual average speed of at least fifteen knots an hour in the ordinary 423
going, and furnish on the trial trips a minimum speed of seventeen knots and a half, with power to use on trials a forced draft.

They must have a displacement tonnage of 5,000 tons at least. The number and the arrangement of the partition bulkheads must be such that if any one compartment is filled with water the ship will continue to float on a calm sea.

Art. 6.—In case the annual average speed fixed by the preceding article shall be exceeded, there

424 shall be allotted to the one to whom the contract is adjudged a supplementary premium calculated at the rate of 12 francs per ton, gross tonnage, for each tenth of a knot of acceleration of speed above the regular speed.

In no case can the amount of the supplementary premium exceed 1,200,000 francs a year.

Art. 8.—Every new steamer destined to be used in the service of the lines indicated in Article 1st must have been built in workshops situated in France.

425 Art. 9.—The other conditions of exploitation shall be determined by the specifications.

Art. 10.—By reason of the subvention granted by the state it is forbidden to the members of the Chamber of Deputies and of the Senate, under penalty of loss to their office to become part of the Committee of Administration or Oversight of the Company which obtains the concession.

The present law deliberated and adopted by the Senate and by the Chamber of Deptuies, shall be executed as a law of the state.

Done at Paris the 24th of June, 1883.

JULES GREVY,

426 By the President of the Republic.

The Minister of Posts and Telegraphs,

AD COCHERY.

Minister of Finance,

P. TIRARD.

the 22nd of July, 1897, and closed on the 22nd of July, 1898. No. 2. 5,473,400 France. 415

Sixth Question: No. 1. Yes. No. 2. No.

Seventh Question: No

Eighth Question: No. 1. Yes. No. 2. It was No. 27 for the year 1897-1898. No. 3. Yes; the company considers each trip as a voyage. No. 4. Yes.

Ninth Question: In 1898 the Captains had a copy of the "Reglement du Service a bord," but having found it necessary to remodel these reglements they have been retired.

Tenth Question: No. 1 Deloncle. No. 2. Yes.

Eleventh Question: Yes. Article No. 395 of the said Reglement read as follows: In conformity with 416 the rules of internation regulations, having for object the prevention of collisions—"All vessels under steam which approach each other so that there may be risk of collision, must diminish their speed, or stop and go backwards if necessary. All vessels under steam must, during foggy weather, preserve a moderate speed." The Captain under these circumstances must diminish the speed of his engines and, in agreement with the Agent of Postes, the Captain must make known by process verbal the delays which such manœuvres may have occasioned.

Twelfth Question: *La Bourgogne* was insured for two-thirds of her value by outside companies, the other third being insured by the company on its 417 Reserve Insurance Fund In July, 1898, the company notified the outside insurers of the total loss of the ship. No abandonment was necessary as the loss was total.

Thirteenth Question: No, except in this proceeding.

Fourteenth Question: The company does not impose any fine upon her Captains in case of delays. The company gives her Captains at the end of the year an insignificant proportion of the "prime a la

418 vitesse" which is allowed her when the speed imposed by the Government contract is surpassed, but this allowance is optional. Captain Deloncle would have receiving in 1898 francs 42.50 per voyage on account of such allowance.

Endorsed—Answers to interrogatories of George Deslions and others.—Filed Mar. 15, 1901.

Extracts from Pamphlet annexed to the Petitioners' Answers to Interrogatories.

419

REPUBLIC OF FRANCE.

LAW OF 24TH OF JUNE, 1883, CONCERNING POSTAL MARITIME SERVICE.

First, Between Havre and New York.

Second, Between France the Antilles and Mexico.

Extract concerning the line from Havre to New York.

The Senate and the Chamber of Deputies have
420 adopted, the President of the Republic of France promulgates the law of the following tenor:

Art. 1st.—The Minister of Posts and Telegraphs is authorized to offer for a period of fifteen years, counting from July 22, 1885, the exploitation of the postal service of New York, the Antilles and Mexico; but before the adjudication the Minister of Postals and Telegraphs can have the power to make an opening of new service on the 22d of July, 1896. In this case the Minister is authorized to take the measures necessary to secure the service on terms which cannot exceed those of the actual agreement.

Ministry of Posts and Telegraphs. 427

SPECIFICATIONS FOR THE EXPLOITATION OF THE POSTAL MARITIME SERVICE BETWEEN HAVRE AND NEW YORK.

CHAPTER FIRST.

ITINERARY.

Art. 1st.—The service to be executed includes a weekly line from Havre to New York, or 52 voyages, going and returning, per year.

The distance to be travelled is 3,130 sea miles, per crossing, and 5,260 sea miles per voyage (going 428 and returning).

The total actual distance traveled is 325,520 sea miles.

The Minister of Posts and Telegrams shall have the power to establish ports at which to touch and to increase the number of ordinary (services) upon the line above mentioned.

The price to be paid or deducted per sea mile, added to the distance travelled, or deducted from that distance, shall be the middle rate per sea mile arising from the adjudication.

* * * * * *

CHAPTER 10. 429

DURATION OF THE AGREEMENT.

The agreement shall be effective beginning from the 22d of July, 1886, till the 21st of July, 1901, inclusive, for fifteen consecutive years.

The remaining clauses of the pamphlet are omitted as having no bearing on the questions at issue.

430 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation
431 of liability and other relief.

ANSWERS of La Compagnie Generale Transatlantique, the libellant and petitioner in the above entitled proceeding, to interrogatories propounded to it herein by W. C Perry and others:

First Question: In 1898 the Board of Directors of the company was composed of· M. M. Pereire (Eugene), President; Cloquemin (Pierre T.), Vice-President; Chabrier, Guerin de Litteau, Halfon Delarbre, Marquis de Flers, Gavini de Campile, Gautreau, Gery, Baron Hely d'Oissel, piot; Gen'l Mgr.,
432 L. Dorigny, since July 8, 1898; Mr. de Jousselin, Chef du Service d'Exploitation (now service d'Armement) since 1890; Mr. Daymard, Chef du Service Technique since 1884; Mr. Fumery, Chef du Service d'Atlantique (sub-division du Service Commercial) since December, 1897.

At Havre: Mr. Vie, Agent of the company since 1895; Mr. Lannes, Engineer of company since 1894.

Second Question: A. There are no rules on the subject of routes to be followed

As to speed during foggy weather, Article 394

of the "Reglement du Service a bord," which was in 433
the hands of our Captains, reads as follows:

B. In conformity with the Articles of the International Regulations having for object the prevention of collisions:

"All vessels under steam which approach near enough each other so that there may be a risk of collision, must diminish their speed or stop and go backwards, if necessary. All vessels under steam, must, during foggy weather, preserve a moderate speed."

The captain, under these circumstances, must diminish the speed of his engine and, in agreement with the Agent of Postes, the Captain must make 434
known, by process verbal, the delays which such maneuvers may have occasioned.

As to collisions, Article No. 394 of the same Regulations reads:

Vessels of the company must conform themselves to the International rules having for their object the prevention of collisions. A printed copy of these rules is posted in a very conspicuous place so as to be at the disposal of all the officers.

The prescriptions of the said Regulations concerning sound signals to be produced in foggy weather must be rigorously observed, and besides, under such conditions, a man must always be kept on watch in the masts. 435

C. Yes. Yes.

D. It has been answered above. Captain Deloncle, like all other Captains, was absolute Master of the route he was choosing, under his own responsibility.

Third Question: A. No; Captain Deloncle was, to public knowledge, perfectly sound of mind and in complete possession of all his faculties.

B. None; the company had none to make, such observations or insinuations never existed.

436 Fourth Question: 491 passengers and 223 crew, total 714.

Fifth Question: *La Bourgogne* had on board for a long time, without possibility to specify since when, 12 boats and 4 rafts. The measurement and capacity of the 12 boats are as follows:

1 boat.....	373	cubic	feet
1 "	373	"	"
1 boat.....	213/9	"	"
1 "	213/9	"	"
1 boat.....	584/4	"	"
1 "	584/4	"	"
1 boat.....	569/5	"	"
437 1 "	569/5	"	"
1 boat.....	599/9	"	"
1 "	599/9	"	"
1 boat.....	361/5	"	"
1 "	361/5	"	"
Total.....	5,404	"	"

The 4 rafts, 19/2 feet long, 22 in diameter of the cylinder, giving a total measurement of 1,200 cubic feet. So that the total cubic foot measurement was 5,004 plus 1,200-6,604 cubic feet. As the gross tonnage of *La Bourgogne* was 7,395 tons, she required
438 a cubic foot measurement for boats and rafts of 5,670; so she had on board 934 cubic feet over the requirement of the law.

Sixth Question: These boats repose on two blocks, which can be freed with a single blow of the hammer, and besides, they are suspended on two swinging davits which turn on themselves. The launching of the life boats then takes but a moment, as there is no railing athwart the boats. The apparatus was established at the construction of the ship.

Seventh Question: A. Marine Charts published by

the Depot of Charts and Plans of the National Navy 439
at Paris, Rue de l'Universite.

B. French and American charts, as well for the ocean voyage as for the coast and harbor water.

Eighth Question: No. Depot of Charts and Plans Rue de l'Universite, Paris. We annex to our answer a list of charts, which were on board. These lists include their numbers, dates, Provinces, also a designation of the points they include.

Ninth Question: A. We have already answered (See our answer to the second question) that there were no instructions, nor rules nor regulations of the company concerning routes to be followed.

B. French laws did not impose any route upon *La* 440
Bourgogne.

Tenth Question: June 26th, 1898, a visit was made by the Captain, the Assistant Chief of Exploitation, the Engineer, Chief of Service Technique and the Principal Agent.

Eleventh Question: No. 27. *La Bourgogne* had left New York for Havre.

Twelfth Question: A. Yes.

B. Yes. We annex to our answer the pamphlet containing the Law of June 24th, 1883, concerning the Postal Maritime Service between Havre and New York, and conditions of contract for the exploitation of the service.

Thirteenth Question: A. Yes. 441

B. In 1898 the company received 5,473,400 francs, which was the annual allowance.

C. Yes.

Fourteenth Question: A. The amount of passage collected for the trip New York-Havre, was 100,703.08 francs. The amount of passage collected for the trip from Havre to New York was 44,480.70 francs.

B. Yes. We refunded to survivors who declined sailing again the amount of outward passage and

442 railroad tickets, also return passage Havre to New York, and railroad tickets to heirs of lost passengers.

C. 13,111.64 francs.

D. Part of this sum was refunded to survivors, and part to heirs of the lost passengers, as above stated.

E. Number 27.

Fifteenth Question: A. 12,716.43 francs.

B. The amount of freight collected on the sailing from Havre was 14,088.95 francs.

C. No.

443

444

CARTES SE TROUVANT *A* BORD DE "LA BOURGOGNE." 445

Numéros.	Partie comprise sur la Carte.	Provenance.	Dates.	
3378.....	Carte de la baie St. Jean (Cote Ouest de Terre Neuve)	Depot des Cartes et Plans de la Marine (France).	1882	
1000.....	Carte des Iles St. Pierre Miquelon	do.	1882	
866.....	Atterrages de l'Ile de Terre Neuve Cap Rase aux iles St. Pierre-Miquelon	do.	1872	
1437.....	Cote orientale de l'Amerique du Nord du detroit de Belle Ile à Boston	do.	1890	
1469.....	New York Mouillages et atterrages	do.	1881	
3855.....	Bancs de Terre Neuve	do.	1897	
1839.....	Bancs au Sud de Terre Neuve Ile de Sable	do.	1897	446
2167.....	Baie d'Halifax	do.	1877	
1998.....	Amerique Septentrionale de la baie de Gaspe à N-York	do.	1888	
3038.....	St. Jean de Terre Neuve	do.	1882	
3437.....	Ile de Terre Neuve	do.	1888	
3851.....	de Nantucket et Henlopen	do.	1894	
982	Isles St. Pierre et Miquelon	do.	1878	
3277.....	Baie de Fundy	do.	1892	
981.....	Nova Scotia et New Foundland Cape St. Mary to Halifax	U. S. Coast Surveys Hydrographic Office.	1894	
17.....	Northeast coast of North America	do.	1894	
2480.....	Long Island Sound	do.	1885	
941.....	Halifax à New-York	do.	1886	
s/n.....	Port de New-York	do.	1887	
980.....	Gd. Banc de Terre Neuve; du Cape Bonavista au Cape St. Mary	do.	1891	
369.....	New York baie et port	do.	1891	
2670.....	Halifax au Delaware	U. S. Coast Surveys Hydrographic Office.	1878	447
1598.....	English Channel	Admirante Anglaise	1898	
2357.....	Havre de Cork (Irlande)	Depot des Cartes et Plans de la Marine (France)	1866	
4814.....	Chenal des Needles à Beachy Head	do.	1895	
3473.....	Chenal du Four et Ile d'Ouessant	do.	1883	
878.....	Ile de Bréhat à Barfleur	do.	1886	
846.....	Cherbourg à Barfleur	do.	1880	
2367.....	Mer du Nord Iles Britanniques.	do.	1882	
3032.....	Ile d'Ouessant à La Loiré	do.	1884	
3968.....	Embouchure de la Seine	do.	1883	
135.....	Belle Ile à Quiberon	do.	1868	
3521.....	Entrée de Brest	do.	1883	
2697.....	Port Louis à Lorient	do.	1877	

448 CARTES SE TROUVANT *A* BORD DE "LA BOURGOGNE"—(*Continued*).

Numéros.	Partie comprise sur la Carte.	Provenance.	Dates.
944.....	Barfleur à La Hague.....	do.	1883
1024.....	Ile de Bas au Hâvre.....	do.	1884
2169.....	La Manche.....	do.	1883
1465.....	Routier de l'Atlantique Nord..	do.	1880
4587.....	Entrée de La Manche; côte N. O. de France.....	do.	1895
2447.....	Côtes Ouest de France; Angleterre, Irland.....	do.	1884
828.....	Ras Blanchart.....	do.	1881
4812.....	Côtes Sud d'Angleterre.....	do.	1895
2823.....	Iles Scilly.....	do.	1876

449 (Endorsed)—Answer to Interrogatories. - Filed Mar. 18, 1901.

450

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the United States Court House in the City of New York on the 15th day of March, 1901. 451

Present—Hon. ADDISON BROWN,
District Judge.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 452

On the underwritten consent it is ordered:

FIRST.—That the order of this Court in the above proceeding entered the 8th day of March, 1901, directing that the interrogatories annexed to the answers of George Deslions and others be taken *pro confesso* be and the same is hereby rescinded and set aside. 453

SECOND.—That the petitioner be and it is hereby allowed to file unverified answers to said interrogatories and serve a copy thereof on the claimants' proctors, the said answers being in French with a translation in English, and that the claimants herein may take such action with reference to said answers as they may be advised with like effect as if they had ben duly verified.

454 THIRD.—That the petitioner be and it is hereby allowed to file within thirty days from this date a copy of said answers duly verified in accordance with the order of this Court, such filing to be *nunc pro tunc* as of this date.

ADDISON BROWN.

We consent to the entry of the above order.

BENEDICT & BENEDICT,
Proctors for George Deslions and others.

JONES & GOVIN,
Proctors for Petitioner.

455 (Endorsed)—Order.—Filed Mch. 15, 1901.

At a Stated Term of the District Court of the United States for the Southern District of New York, held in the United States Court House in the City of New York on the 15th day of March, 1901.

Present—Hon. ADDISON BROWN,
District Judge.

IN THE MATTER

456 OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

On the underwritten consent it is ordered:

FIRST.—That the petitioner be and it is hereby allowed to file unverified answers to the inter-

rogatories annexed to the answers of W. C. Perry and others and serve a copy thereof on the claimants' proctor, the said answers being in French with a translation in English, and that the claimants herein may take such action with reference to said answers as they may be advised with like effect as if they had been duly verified. 457

SECOND.—That the petitioner be and it is hereby allowed and required to file within thirty days from this date a copy of said answers duly verified in accordance with the order of this Court, such filing to be *nunc pro tunc* as of this date.

ADDISON BROWN. 458

We consent to the entry of the above order.

A. GORDON MURRAY,
Proctor for W. C. Perry and others.

JONES & GOVIN,
Proctors for Petitioner.

(Endorsed)—Order.—Filed March 15, 1901.

Pursuant to the above orders the answers to the interrogatories were thereafter refiled to which were annexed verifications in the following forms: 459

UNITED STATES CONSULATE GENERAL, Paris, France, } ss.:

EUGENE PEREIRE, being duly sworn, deposes and says:

That he is the President of La Compagnie Generale Transatlantique, the petitioner in this cause; that he has read the foregoing answers to the interrogatories propounded by George Deslions and

460 others, and that the same are true to the best of deponent's knowledge, information and belief.

EUG. PEREIRE.

Sworn to before me this
2d day of April, 1901.
JOHN K. GOWDY,
[SEAL.] United States Consul-General.

(Endorsed)—Answers of petitioners to interrogatories annexed to answers of George Deslions & ors.—Filed Apr. 16, 1901.

461 UNITED STATES CONSULATE GENERAL,
Paris, France, } ss.:

EUGENE PEREIRE, being duly sworn, deposes and says:

That he is the President of La Compagnie Generale Transatlantique, the petitioner in this cause; that he has read the foregoing answers to the interrogatories propounded by W. C. Perry and others, and that the same are true to the best of deponent's knowledge, information and belief.

EUG. PEREIRE.

Sworn to before me this
2d day of April, 1901.
462 JOHN K. GOWDY,
[SEAL.] United States Consul-General.

(Endorsed)—Answers of petitioner to interrogatories annexed to answers of W. C. Perry & ors.—Filed Apr. 16, 1901.

UNITED STATES DISTRICT COURT, 463

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability. 464

GENTLEMEN:

Please take notice that on the pleadings and proceedings in this case, and especially the answers served by the petitioner to the interrogatories tendered to the petitioner on behalf of George Des-Lions and W. C. Perry, claimants, and the transfer executed by the petitioner to me as Trustee herein, and the affidavit hereto annexed, I shall apply to this Court at the opening thereof, on the 30th day of April, 1901, or as soon thereafter as counsel can be heard, for an order directing that the petitioner 465 deliver over to me, as Trustee heretofore appointed in this case, the amount of freights of the *Bourgogne*, specified in said answers to interrogatories in this proceeding, both that which is specified as received for freight from Havre to New York, and also for freight from New York to Havre, and also that which is specified in said answer as passage money received for said voyage of the *Bourgogne*, as well the passage money from Havre to New York as from New York to Havre, and also the one-fifty-second part of the sum of 5,473,400 francs, the

466 government subvention mentioned in said answers, being the sum received by the petitioner as compensation for the twenty-seventh voyage, to wit, the voyage on which the *Bourgogne* was engaged at the time of her loss, with interest on all said sums, from the date of the said loss of the *Bourgogne*, and for such other or further order or relief as to the Court shall seem fit.

Dated New York, April 25, 1901.

Yours, &c.,

S. H. LYMAN,

Trustee.

To Messrs. JONES & GOVIN,

467 Petitioner's Proctors.

R. D. BENEDICT,

Proctors for Trustee.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

468 The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

Southern District of New York, ss.:

SAMUEL H. LYMAN, being duly sworn, says that he is the trustee heretofore appointed by this Court to receive the transfer from the petitioners of the said steamship *La Bourgogne* of their interest in the said steamship and her freight for the voyage mentioned in the libel; that as such trustee there

has been heretofore conveyed, assigned, transferred 469
and delivered by the petitioners to him the wreckage of the said steamer consisting of two boats and two life rafts.

That the above property mentioned constitutes all that has been transferred to the undersigned as trustee, notwithstanding in the written transfer by the petitioners to said trustee, they stated that they thereby "conveyed, assigned, transferred and delivered over to said trustee all and singular the interest of the said petitioner in the said steamship *La Bourgogne*, her engines, tackle, apparel and furniture and in the freight of the said steamship for the voyage in which the said steamship was lost 470
as aforesaid." That he has endeavored to obtain from the petitioners the freight moneys specified in the answers to interrogatories referred to in the notice of motion accompanying this affidavit, and the assignment aforesaid, and the passage money received for the voyage of *La Bourgogne* as also mentioned in said notice; that in reply to a written demand therefor by the trustee upon the said petitioners, they replied on or about the 18th day of May last, "that the same is not subject to a claim by you as trustee under the proceedings to limit liability, otherwise it would have been handed to you on presentation of the petition."

S. H. LYMAN. 471

Sworn to before me this
25th day of April, 1901.
(Signed) ALEX. GILCHRIST, Jr.,
Notary Public,
[SEAL.] Kings and N. Y. Cos.

(Endorsed)—Affidavit and Notice of Motion to pay over freight.—Copy of the within affidavit and notice received. April 26th, 1901. Edward K. Jones, Proctor for Pet.—Mo. adjd. at Petitioner's request to May 7th, at 11—Apr. 29, 1901. Jones & Govin, Procs. for Petrs.

472 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Li-
473 ability.

GENTLEMEN:

Please take notice that on the pleadings and proceedings in this case, and especially the answers served by the petitioner to the interrogatories tendered to the petitioner on behalf of the claimants George Deslions and W. C. Perry, and the transfer executed on behalf of the petitioner to the Trustee appointed herein, we shall move this Court at the opening thereof on the 22d day of April, 1901, or as soon thereafter as counsel can be heard, for an
474 order directing that the petitioner shall deliver over to the Trustee heretofore appointed in this case the amount of freights specified in the said answers, as well the freight from Havre to New York as from New York to Havre, and also the passage money specified in said answer as received for said voyage of the *Bourgogne* from Havre to New York and back from New York to Havre, and also a one-fifty-second part of the sum of 5,473,400 francs, the Government subvention mentioned in said answers, being the share thereof received by the petitioner for the twenty-seventh voyage, to wit,

th voyage on which the *Bourgogne* was engaged at 475
the time of her loss, with interest on all said sums from the date of the said loss of the *Bourgogne*, and for such other order or relief as to the Court shall seem just.

Dated New York, April 17th, 1901.

Yours, &c.,
BENEDICT & BENEDICT,
Proctors for Deslions *et al.*
A. GORDON MURRAY,
Proctor for W. C. Perry and others.

To JONES & GOVIN, Esqs.,
Proctors for Petitioners. 476

Motion adjourned at Petitioners' request to May 7, at 11.

April 29, 1901.

JONES & GOVIN,
Proctors for Petitioners.

(Endorsed)—Notice of Motion to pay money to Trustee. Let this motion be "reserved generally" without further action at this time, as well as the application for sale of boats.—May 11/01. A. Brown.

477

478 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
479 BOURGOGNE," for limitation of liability and other relief.

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

EDWARD K. JONES, being duly sworn, deposes and says:

That he is one of the proctors for the above-named petitioner.

And deponent further deposes and says that the said petitioner has been served with notice of a motion to deliver to the Trustee in this cause cer-
480 tain prepaid freight and passage money and a certain proportion of an annual subsidy received by the petitioner for the operation of its line between New York and Havre.

And deponent further deposes and says that the petition in this cause shows that the steamship *La Bourgogne*, which is the subject matter of the present proceedings, was a total loss, together with her pending freight. It is true that a portion of the said pending freight was paid to the petitioner in advance, but the shippers who paid the same claim its return. Deponent also alleges that a

similar claim has been made for the passage money for the voyage between New York and Havre. 481

As to the annual subsidy paid to the company by the French Government, the deponent is advised and believes that the contract of subsidy which appears in evidence in the cause will show that the same is an entirety and has no separate application to the several voyages of the petitioner's steamers and, therefore, is not in any sense "pending freight," or freight for the "voyage."

For these reasons the libel and petition averred that the *Bourgogne* and her freight were a total loss and that nothing was saved except a life-boat and two life-rafts. 482

And deponent further deposes and says that it will appear from an examination of the claims in this cause in connection with the provisions of the contract of passage (namely the limitation of liability for baggage to $100.00 for first-class passengers, and $60.00 for second-class passengers) set forth in an affidavit of deponent verified the 16th day of November, 1900 (there being no bill of lading or other contract for carriage of merchandise), that the utmost amount which the claimants in this cause can recover, even in the event of their fixing blame and liability upon the petitioner, is about two thousand six hundred dollars. Deponent begs leave to refer to the said affidavit and to the said claims as if they were herein fully set forth. 483

EDWARD K. JONES.

Sworn to before me this
7th day of May, 1901.

FREDERICK KOPF,
Notary Public (73),
N. Y. Co.

(Endorsed)—Affidavit of Edward K. Jones

484 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
485 BOURGOGNE," for limitation of liability and other relief.

Southern District of New York, ss.:

A. GORDON MURRAY, being duly sworn, deposes and says: That he is proctor for W. C. Perry, administrator, &c., John Perry, and Pauline Henuy, administratrix, and that he has interposed as answer herein in behalf of aforesaid claimants, and that acting in behalf of such claimants he joined in the motion made the 7th day of May, 1901, to compel the petitioner to pay over freight and passage money acknowledged to have been re-
486 ceived by the said petitioner on account of the last voyage of the S. S. *La Bourgogne.*

Deponent replying to the intimation contained in the affidavit of Edward K. Jones used on said motion, that there was a contract of passage whereby there was a "limitation of liability for baggage to $100 for first-class passengers and $60 for second-class passengers," says that no such contract of limitation appears in this proceeding either in the pleadings or otherwise, except by an *ex parte* affidavit of Edward K. Jones, dated the 16th day of November, 1900, but that it does appear by the

testimony of John Perry, Esq., taken *de bene esse* 487
before U. S. Commissioner Thomas Alexander on the 14th day of December, 1900, and filed herein, that the ticket which he purchased for the transportation of his family per S. S. *La Bourgogne* did not contain stipulations as far as he knew and that he entered into no special contract or agreement with the company or its agent for a limitation of liability to any sum or sums and further that the said Edward K. Jones then and there refused to produce a copy of any such agreement, contract or stipulation if one existed. (Pp. 94-6, Deposition John Perry.)

A. GORDON MURRAY. 488

Sworn to before me this }
8th day of May, 1901. }
RUSSELL LORD TARBOX,
[SEAL.] Notary Public,
N. Y. County.

Southern District of New York, ss.:

MONROE MACMILLAN, being duly sworn, deposes and says: That he served a copy of the above affidavit upon Edward K. Jones, by leaving a copy thereof at his office, this 8th day of May, 1901.

MONROE MACMILLAN.

Sworn to before me this } 489
8th day of May, 1901. }
RUSSELL LORD TARBOX,
[SEAL.] Notary Public,
County of New York.

(Endorsed)—Affidavit.

490 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

491

On the pleadings and proceedings in this cause and the affidavit hereto annexed, let the petitioner herein show cause before me on the 22d day of April, 1901, at the opening of Court on that day, or as soon thereafter as counsel can be heard, why an order should not be made requiring the petitioner herein to produce upon the trial of this cause all the logs in the petitioner's possession which were kept on board of the steamship *Bourgogne*, or any other of the steamers of the petitioner on their
492 voyages between Havre and New York, during the three years before the 4th of July, 1898, or for such other order or relief as to the Court shall seem just.

ADDISON BROWN.

April 16th, 1901.

UNITED STATES DISTRICT COURT, 493

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability. 494

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says: That it is matter of general knowledge that for years before the loss of the steamer *Bourgogne* in the collision between her and the *Cromartyshire*, the steamers of the petitioner in crossing the Atlantic had generally been run in thick fogs at a speed which was not moderate, as required by the International Navigation Rules.

That, as deponent is informed and believes, the logs of said steamers which were kept on them during said voyages, contained entries showing that the speed of such steamers during fogs was not a moderate speed. 495

That in the course of these proceedings deponent, as proctor for one of the claimants herein, has endeavored to obtain by the examination of the captains of the steamers belonging to the petitioner, an examination of the logs kept on board of such steamers, in order to obtain from such logs and from the masters of such steamers evidence to

496 establish the fact which is above stated, that said steamers were generally run in fogs at rates of speed which were not moderate. And that for that purpose deponent has caused several captains of the petitioner's steamers to be subpœnaed to appear to be examined and bring with them the logs both of the engine room and of the deck of such steamers. That on all such instances, although the said witnesses have brought the said logs in accordance with the subpœna, they have, under the advice of petitioner's counsel, refused to produce the said logs in evidence, or to allow deponent, while such testimony was being taken to make any examina-
497 tion whatever of any of such logs. And that the motion for the attachment of one of said witnesses for refusal to produce such logs is now pending before the Court.

And deponent further says that it is herein testified by one of said captains that the logs of the steamers are at the end of each voyage, or thereafter, sent on shore in France to the offices of the petitioner, and deponent therefore believes that the said logs of said steamers remain and are in the possession of the petitioner in France. And deponent believes that the said logs of the steamers kept during the voyages before the collision in ques-
498 tion which took place on the 4th of July, 1898, will furnish evidence which is material to the disposal of the issues in this action.

R. D. BENEDICT.

Sworn to before me this 15th day of April, 1901.
WM. D. JONES,
U. S. Com'r,
[SEAL.] S. D. of N. Y.

(Endorsed)—Affidavit and order to show cause for production of logs before July 4, 1898.—

"I have given much thought to this motion, but 499
cannot write in extenso. I conclude to order the logs of the *Bourgogne* only to be produced for two years prior to July 4, 1898. No decision is made as to the question of priority under the Act of 1884. May 11, 1901."—Filed May 15, 1901.—A. Brown.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

500

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

UNITED STATES OF AMERICA, Southern District of New York, } ss.: 501

EDWARD K. JONES, being duly sworn, deposes and says:

That he has read the affidavit of Robert D. Benedict herein, verified the 15th day of April, 1901, in support of a motion to require the petitioner to produce upon the trial of this cause the log books of the petitioner's steamers during the three years preceding the 4th day of July, 1898, in which said affidavit it is stated it is a matter of general knowledge that for years before the loss of the steamer

502 *Bourgogne* in the collision between her and the *Cromartyshire* all steamers of the petitioner in crossing the Atlantic had generally been run in thick fogs at a speed which was not moderate as required by the International Navigation Rules, and that as deponent (the said Robert D. Benedict) is informed and believes the log books of said steamers which were kept on them during said voyages contain entries showing that the speed of such steamers during fogs was not a moderate speed.

I deny both of the foregoing statements absolutely. I have been counsel for the petitioner for
503 over fifteen years and have tried every collision case and every other case involving the question of speed of the said steamers which has arisen in the Courts of the United States during that time, and I deny that it is a matter of general knowledge, or otherwise, that for years before the loss of the *Bourgogne*, or at any other time, the steamers of the petitioner crossing the Atlantic had been generally, or otherwise, run in thick fogs at a speed which was not moderate as required by the International Navigation Rules, and I also deny that the logs of the said steamers contain, or contained, entries showing that the speed of such steamers during fogs was not a moderate speed.

504 On the contrary, a rule of the company in regard to the speed in fogs issued to its captains, is as follows:

> "In conformity with the rules of International regulations, having for object the prevention of collisions, all vessels under steam which approach each other so that there may be a risk of collision, must diminish their speed, or stop and go backwards, if necessary. All vessels under steam must, during foggy weather preserve

a moderate speed. The Captain under these 505
circumstances must diminish the speed of his engines and, in agreement with the Agent of Postes, the Captain must make known by proces verbal the delays which such maneuvres may have occasioned."

The deponent also denies that the logs of the said steamers kept during the voyages before the collision in question will furnish evidence which is material to the disposition of the issues in this action.

EDWARD K. JONES.

Sworn to before me this 506
20th day of April, 1901.
(Signed) FREDERICK KOPF,
tary Public (73),
[SEAL.] N. Y. Co.

(Endorsed)—Affidavit of Edward K. Jones in opposition to motion for order to produce log-book.—Filed May 15, 1901.

507

508 At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on the 15th day of May, in the year of our Lord one thousand nine hundred and one.

Present—The Honorable ADDISON BROWN,
District Judge.

IN THE MATTER

509 OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for Limitation of Liability.

A motion having been made herein on behalf of the claimants for an order that the petitioner produce the logs of its steamers for a period of three years before July, 1898, and on hearing counsel for
510 the respective parties,

It is ordered that the petitioner herein produce on or before the trial of this cause all logs kept on board the steamship *La Bourgogne* during the period of two years previous to the collision in the petition mentioned, and also all logs kept on any other steamer of the petitioner running between Havre and New York for the same time, of which the same captain who was captain of the *Bourgogne* at the time of the collision was then master.

ADDISON BROWN.

(Endorsed)—Order to Produce Logs of *La Bourgogne*.—Filed May 15, 1901.

UNITED STATES DISTRICT COURT. 511

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE."

512

SIR:

Please take notice that on the pleadings and proceedings herein, and on the affidavit hereto annexed, we shall move this Court at the opening thereof on Wednesday, July 11, 1900, or as soon thereafter as counsel can be heard, for an order that unless the proctor of the petitioner herein shall give, as attorney for the petitioner in the suit brought in the United States Circuit Court by George Deslions against said petitioner in said affidavit referred to, a consent that the commission heretofore issued in said cause and now in the office of the Clerk of the said United States Circuit Court, may be opened and put on file, the stay 513
heretofore granted herein of proceedings on the part of the said Deslions in said suit in the United States Circuit Court be set aside and vacated, or for such other or further order or relief as to the Court shall seem just.

Dated New York, July 5, 1900.

Yours, &c.,

(Signed) BENEDICT & BENEDICT,

Proctors for Deslions.

To E. K. JONES, Esq.,

Proctor for Petitioner.

514 UNITED STATES DISTRICT COURT.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE."

515

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says: That he is one of the proctors for George Deslions, one of the claimants in this action.

That an action was heretofore brought in the United States Circuit Court for this district by said George Deslions against the petitioner herein, to recover damages caused to him by the loss of the stamship *Bourgogne* in the petition referred to.

That in said action a commission was issued in October last, to take the evidence at Cardiff, Wales, of Oscar H. Henderson, master of the ship *Cro-*
516 *martyshire*, in reference to the facts and circumstances attending the collision between the *Cromartyshire* and the *Bourgogne*, which resulted in the sinking of the *Bourgogne*.

That said witness having sailed from Cardiff, the said commission was re-issued in January last to the United States Counsel at Nagasaki, Japan, that it was by him executed, and the deposition of said witness was taken, and said commission has been returned and is now in the office of the Clerk of the Circuit Court of the United States for this district, has not been opened.

That deponent has applied to Mr. Jones, the proctor of the petitioner herein, who is also attorney of the petitioner in said suit in the United States Circuit Court, and asked him to consent that said commission may be opened, but said proctor refused to give such consent. 517

And deponent avers that the facts and circumstances attending the said collision of said two vessels are material and necessary to be proved on behalf of the claimants herein on the trial of this cause, and that the opening of said commission and its inspection may be of importance to this claimant in the preparation for the trial of this present suit. 518

R. D. BENEDICT.

Sworn to before me this 5th day of July, 1900.
(Signed) WM. D. JONES,
U. S. Com'r,
S. D. of N. Y.

[SEAL.]

(Endorsed)—Affidavit and Notice of Motion for Order to open Commission.—Within Motion granted so far as to modify the previous injunction so as to permit the Commission referred to to be opened and filed in the cause pending in the Circuit Court.—July 12, 1900. —A. Brown.—Filed Jul. 13, 1900. 519

520 **Deposition O. H. Henderson Taken on Commission Circuit Court. Respts.' Ex. 14.**

CIRCUIT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

521 CATARINA CASAZZA, as Administratrix of the goods, chattels and credits, late of Lugi Casazza, late of the City and County of New York, deceased,

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

522 HENRY WUERTZ, as Administrator of the goods, chattels and credits late of Emile H. Wuertz, late of the City of New York, deceased,

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

523

ADRIAN REYMOND, as administrator of the goods, chattels and credits of Adele Reymond, late of the City of New York, deceased,

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

524

CHARLES MAYER, as administrator of the goods, chattels and credits of Henry Mayer, late of the City of New York, deceased,

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

525

GEORGE DES LIONS

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

526

SUPREME COURT,

COUNTY OF NEW YORK.

PAULINE HENUY, as administratrix of Juliette Cicot,

v.

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

527

On the annexed consent of all the proctors in the above entitled cases, it is hereby

Ordered, that the commission heretofore issued out of this Court in the above entitled cases, directed to the Consul or Vice-Consul of the United States at Cardiff, Wales, to examine on interrogatories and cross-interrogatories O. H. Henderson, formerly master of the ship *Cromartyshire*, a witness on behalf of the plaintiffs in the above entitled cases, and returned by said Consul unexecuted, be forwarded again to the Consul or Vice-Consul of
528 the United States at Nagasaki, Japan, with the original interrogatories and cross-interrogatories and exhibits annexed, to be by him executed under the instructions attached to the commission as originally issued.

Dated New York, January 17, 1900.

(Sgd.) E. HENRY LACOMBE,
U. S. Circuit Judge.

[SEAL.]

A copy.

JOHN A. SHIELDS,
Clerk.

It is hereby stipulated and agreed, that the commission heretofore issued out of this Court in the above-entitled cases, directed to the Consul or Vice-Consul at Cardiff, Wales, to examine on interrogatories and cross-interrogatories O. H. Henderson, formerly master of the ship *Cromartyshire*, a witness on behalf of the plaintiffs in the above entitled cases, and returned by said Consul unexecuted, may be forwarded again by this Court to the Consul or Vice-Consul of the United States at Nagasaki, Japan, with the original interrogatories and cross-interrogatories and exhibits annexed, to be by him executed, under the instructions attached to the commission as originally issued. 529 530

Dated New York, January 15, 1900.

JONES & GOVIN,
Attorneys for Defendants.
BENEDICT & BENEDICT,
Proctors for Deslions *et al.*
GAYLEY & FLEMMING,
Attorneys for Henuy.
KENNESON, CRAIN & ALLING.

INTERROGATORIES TO BE PROPOUNDED TO O. H. HENDERSON, EXAMINED ON COMMISSION IN THE ABOVE CASES, PURSUANT TO STIPULATION ANNEXED. 531

1. State your name, age, residence and occupation, and, if you say that you are a mariner, state what your seafaring experience has been.

2. What vessel were you connected with on the 4th of July, 1898, and what position did you hold on such vessel?

3. If you say that you were master of the British ship *Cromartyshire*, then state how long you had been her master, and give a full description of the ship?

532 4. From half-past four to five o'clock in the morning of the 4th of July, 1898, in what part of the sea was the *Cromartyshire,* on what voyage bound, loaded with what, how headed, with what sail set? How fast was she moving through the water?

5. What was the condition of the wind and the weather at that time, and how long had such condition prevailed?

6. If you shall say that it was foggy, describe the denseness of the fog, and state whether anything had been done or was being done on board the *Cromartyshire* in consequence of the foggy con-
533 dition of the weather. If you shall say that your fog horn was being blown, state what blasts were being sounded, and at what intervals, and describe the fog horn of the *Cromartyshire?*

7. Who were on deck at the time, and where were they stationed? Were you yourself on deck?

8. Did you hear the signals of an approaching vessel? If yes, describe the same fully, telling what you heard, what time you heard it first, where away you heard it, how many times you heard it, what intervals were between the signals and what, if any, changes in the direction of the signals you noticed?

534 9. Was anything done on board the *Cromartyshire* in consequence of the hearing of such signals, and if so, what?

10. What followed? What was the name of the other vessel? Describe fully the collision?

11. What time was the collision? State whether it was light at the time?

12. When you first saw *La Bourgogne* how did she bear from you, and in what direction did she appear to be heading? How long before the collision did you first see her?

13. At what rate of speed did the *Bourgogne* ap-

pear to you to be moving? Be particular about this and give any reasons that you may have for stating such rate to have been her speed? 535

14. How did the vessels come together? What part of *La Bourgogne* was struck? What was the result to the *Cromartyshire?*

15. How long was *La Bourgogne* visible to you? Why did you lose sight of her? What became of her? What did you hear from her before she sank?

16. What was done on board of the *Cromartyshire* after the collision?

17. How long was it before the fog lifted? What did you see and hear then? 536

18. What did the *Cromartyshire* do after that, and how did she get into port?

19. What was the exact spot where the collision occurred? Is that in the usual track of European liners at that time of year? If not, how far away was it?

20. Do you know of any other matter or thing of benefit to the plaintiff herein? If so, state the same fully, as though you had been specially interrogated in regard thereto?

The foregoing interrogatories are hereby settled by consent, subject to all legal objections to be taken on the trial. 537

New York, October 27/99.

JONES & GOVIN,
Attorneys for Defendant.

(Endorsed)—Circuit Court of the United States, S. D. of N. Y.—George Des Lions *v.* La Compagnie Generale Transatlantique. And Five other cases v. Same.—Interrogatories for examination of O. H. Henderson.—Benedict & Benedict, Proctors for Des Lions, 68 Wall Street, New York, N. Y.

538 CROSS-INTERROGATORIES TO BE PROPOUNDED TO O. H. HENDERSON, TO BE EXAMINED ON COMMISSION IN THE ABOVE ENTITLED CASES, PURSUANT TO STIPULATION ANNEXED.

1. What do you know about the usual routes pursued by steamers between Europe and America? Have you ever been master of a steamer, and if so, what was her name? To and from what port did she ply?

2. Who did you have on the look out at the time of and just before the collision? Was it the same man who was engaged in sounding the foghorn? What was his name?

539 3. After you heard the fog-whistle of *La Bourgogne* sufficiently long to fear a collision, what steps did you take by shortening sail, or otherwise, to avoid a collision? Did you place any men on the yards to back them, if necessary? If so, who did you send aloft for that purpose? What were their names?

4. What was the total number of your officers and crew? What watch was on deck at the time you heard *La Bourgogne's* fog whistle to the time of collision? How many were they and what were their names?

5. Had you seen before your examination on this commission, a copy of the stenographer's minutes
540 of your testimony in the case of Thomas Law & Co. *vs.* La Compagnie Generale Transatlantique in the Probate, Divorce and Admiralty Division of the High Court of Justice of England?

6. Have you had any correspondence with the attorneys for the plaintiff in this case respecting your testimony herein, or have you received instructions from the owners to appear and testify in these cases? If you say you have had such correspondence, annex the whole of the same to your deposition, and if you have been instructed to testify in this case, state what such instructions were, and, if in writing, annex them to this commission.

7. Look at the annexed transcript of what appears to be the official shorthand writer's notes of your evidence in the case of Thomas Law & Co. *vs.* La Compagnie Generale Transatlantique in the Probate, Divorce and Admiralty Division of the High Court of Justice, and state whether or not the same is a true statement of your testimony in that case. Do you still affirm the statements that you made in answer to the questions and cross-questions that were propounded to you upon that trial as appearing in the said shorthand writer's notes? If you say that the same is not a correct report of your testimony upon that trial, state in what particulars the same is incorrect. 541 542

(The Commissioner is requested to mark the transcript referred to for identification.)

8. Do you know any other matter or thing of advantage to the defendant on the trial of the above entitled action? If so, please state the same as if you were specially interrogated thereunto.

JONES & GOVIN,
Attorneys for Defendant.

The foregoing interrogatories are hereby settled by consent, subject to all legal objections to be taken on the trial.

New York, October 27, 1899.

BENEDICT & BENEDICT,
Attys. for Plaintiff Casazza. 543

KENNESON, CRAIN & ALLING,
By E. G. B.,
Attys. for Plaintiff Wuertz.

KENNESON, CRAIN & ALLING,
By E. G. B.,
Attys. for Plaintiff Reymond.

KENNESON, CRAIN & ALLING,
By E. G. B.,
Attys. for Plaintiff Mayer.

BENEDICT & BENEDICT,
Attys. for Plaintiff Des Lions.

GAYLEY & FLEMMING,
By E. G. B.,
Attys. for Plaintiff Henny.

544

IN THE PROBATE, DIVORCE AND ADMIRALTY DIVISION

OF THE ENGLISH HIGH COURT OF JUSTICE.

THOMAS LAW & COMPANY

AGAINST

LA COMPAGNIE GENERALE TRANSATLANTIQUE.

545

TRANSCRIPT OF THE OFFICIAL SHORTHAND WRITER'S NOTES OF THE EVIDENCE.

OSCAR HELMORE HENDERSON. (Sworn.)

EXAMINED BY SIR ROBERT REID:

Q. Are you the master of the ship *Cromartyshire?* A. Yes.

Q. What size is she? A. 1,462 net register.

Q. She belongs to the Port of Glasgow, I believe? A. Yes.

546

Q. Have you been for about 3½ years in command? A. Yes.

Q. She sailed from Dunkerque on the voyage in question? A. Yes.

Q. On the 8th of June, 1898, with a cargo of chalk? A. Yes.

Q. Bound for Philadelphia? A. Yes.

Q. And I think nothing important took place until the day of this collision? A. No, the 4th day of July.

Q. That was on the 4th of July? A. Yes.

Q. Was there any fog in the morning? A. Yes; 547
thick fog.

Q. What time did it begin? A. About 1 o'clock in the morning.

Q. And at that time what was the wind? A. About S. W. true.

Q. What strength was it; a fresh breeze, or what? A. Previous to the fog shutting down it was a fresh breeze, after the fog shut down the wind died out. During the morning watch the wind was quite moderate, about force 4.

Mr. Justice Barnes: What would it be at the time of the collision? A. Moderate, very moderate.
548

Q. Force? A. Not any more—less.

Q. Not any more than 4? A. No.

Sir Robert Reed: Q. When the fog first came on what sail were you carrying? A. All plain sail, except the royals, and spanker, and main topmast stay-sail.

Q. Did you remain on deck or in the chart room up to the time when the collision took place? A. Yes.

Q. What speed was the ship sailing? A. The first two hours she was going about 5, and the last two about 4, the wind dying out the whole time.

Q. You mean the last two just before the col- 549
lision? A. Yes.

Q. What was the sea? A. A high sea running from the westward.

Q. Did you give any instructions in regard to the course of the vessel? A. Yes.

Q. What were they? A. To keep her close to the wind, as close as possible, in order to deaden her headway.

Q. Was that done? A. Yes.

Q. At the time when the collision took place I

550 think it is common ground you were on the port tack? A. Yes.

Q. And the wind, what direction was the wind in then, as near as you could make it? A. About S. W. true.

Q. While you were in the chart room, when did you first hear the steam whistle of *La Bourgogne?* A. About ten minutes or more before the collision.

Mr. Justice Barnes: Close hauled on the port tack, with the wind as you say, how was your head? A. W. N. W. true.

Sir Robert Reid: You told us that you first heard the steam whistle of *La Bourgogne?* A. While I
551 was in the chart room.

Q. About how long before the collision? A. About 10 minutes or more before the collision.

Q. What did you do? A. I went on deck immediately, and asked the Chief Officer if he had heard it, and he said no.

Q. Did you hear it again? A. About a minute or so afterwards he heard it again, and we all heard it.

Q. During the fog? The fog had lasted then more or less for some hours? A. Four hours.

Q. Had your fog horn been kept blowing? A. Yes.

552 Q. Tell me what time it was blown? A. Two consecutive blasts, the port tack signal.

Q. At intervals of how long? A. A little less than a minute.

Q. As a matter of fact, how long had the vessel been on the port tack? A. Since 1 o'clock the previous day.

Q. And did she alter her course at all? A. No, we were steering by the wind.

Q. About the fog horn, was it a powerful fog horn, or not? It was the best in use—a Norwegian foghorn—the best we could get.

Mr. Justice Barnes: Do they not make them in England? A. It was a Norwegian, but they do make them in England. 553

Q. Mechanical? A. Yes.

Sir Robert Reid: The fog horn is here, I understand?

Mr. Justice Barnes: I see there is a question about it, we had better see it.

(The fog horn was produced.)

Sir Robert Reid: I do not know whether this fog horn has been in any damaged any further since the collision? A. It was damaged in the collision, you can see where it is broken. 554

Mr. Justice Barnes: Does it work now? A. It works all right, sir.

Sir Robert Reid: What was the extent of the damaage in the collision? A. The case broken in as you see there.

Q. At all events, did it prove an efficient fog horn? A. Yes.

Q. Who was in charge of it at the time of the collision and for a quarter of an hour before? A. A man named William Hailey.

Q. When you heard the steam whistle did you give any directions or do anything with regard to the fog horn blowing? A. Yes, I sent the mate forward to see that the blasts were not blown too long. 555

Q. What was the reason for your doing that? A. Because in my opinion he was blowing them a little too long.

Mr. Justice Barnes: What do you mean, too long a blast, or too long an interval? A. No, too long a blast, the man being anxious to make a great noise; I thought he was blowing them a little longer than they should have been.

556 Sir Thomas Reid: Did the mate go forward? A. Yes.

Q. And did he remain there until the collision? A. Yes.

Q. And after he went forward was the fog horn blown as you thought it ought to be? A. Yes.

Q. How long was that incident before the collision took place? A. That was 9 or 10 minutes before the collision. Immediately we heard the second whistle I sent the mate forward.

Q. Did you continue to hear the fog whistle of *La Bourgogne* from the time you first heard it? A. Yes.

557 Q. Did the whistle follow on your horn, or did it appear to be blowing independently? A. He seemed to be answering us, because we did not blow together.

Q. You told us that you kept on your course? A. Yes.

Mr. Justice Barnes: Do you mind my following it a little? I should like to know where that fog horn was with regard to the direction and distance.

Sir Robert Reid: Will you answer that if you please? A. It was flashed on top——

Mr. Justice Barnes: No, the sound? A. It was on our port beam, or forward of the beam, I could

558 not exactly locate the sound.

Q. Or distance? A. I could not tell that, sir.

Sir Robert Reid: Of course you noticed that the sound was getting nearer? A. Yes, it kept nearing us very fast.

Q. When did you first see *La Bourgogne?* A. When she was about a ship's length or two from us, that was all.

Q. Was there any time to do anything between time you first saw her and when the collision took place? A. None whatever; it was only an instant.

Q. So far as you could judge in the short time 559
that you had, did she appear to be going slow, or moderate, or how? A. She seemed to be going very fast.

Q. How did your ship meet her? A. Our jib boom went in just abaft her fore rigging.

Q. Describe what happened? A. She disappeared out of sight in an instant.

Q. What effect did the collision produce on your vessel? A. Our bow was torn off, and the forttopmast came down with all the gear attached to it, and the main sail was broken off.

(Some photographs of the damage were produced and handed up.) 560

Mr. Justice Barnes: Would you mind putting the ships in collision and let it be drawn; give us the angle, if you can, when they struck.

(The models were placed as desired, and their position was drawn.)

Sir Thomas Reid: Your jib boom and bowsprit were carried away? A. Yes.

Q. Was the bowsprit an iron bowsprit? A. Yes.

Q. What did you do with your own ship afterward? A. You told us the steamer was lost to view. 561

Q. She disappeared in an instant, we had not time read her name.

Q. What did you do? A. I ordered the boats out immediately.

Q. Did you then examine the extent of the damage? A. Yes; while the boats were being swung out I went and ascertained the extent of the damage.

Q. We have seen the photographs, how many feet forward were carried away? A. From the figurehead to the last broken beam was 25 feet.

562 Q. After examining did you form an opinion as to whether your own vessel was in immediate danger? A. Well, I saw she was not sinking just then; the bulkhead was keeping her afloat.

Q. Was there any other bulkhead? A. Was there only one bulkhead? Or were there more? A. There was only one, there was a chain-locker bulkhead abaft, but it only went as far as the between decks.

Q. Then after that, what orders were given next? A. To clear away the wreckage, and slip the anchor which was hanging over the bow; there was a danger of pricking a hole into her.

563 Q. While that was being done did you hear the steamer's whistle? A. I did, sir.

Q. Did you hear anything more? A. Yes.

Q. Rocket? A. Some time afterwards—half an hour afterwards.

Q. And did you hear a shot? A. One, yes.

Q. How long was that after? A. That was about 35 minutes after the collision.

Mr. Justice Barnes: The rocket? A. Yes, and the shot.

Sir Robert Reid: What did you do upon that? A. I answered it, I sent up several rockets and fired several shots.

564 Q. Did you suppose or think at that time that the other vessel was in danger? A. I did not, sir; she appeared to me to be coming back so I thought was looking for me. She was steering away towards the north when I last heard her whistle.

Q. How long after the accident was it that the fog lifted? A. About an hour after the accident.

Q. And what did you then see? A. I saw two boats with a French flag flying, on my port bow.

Q. What had been occurring to your vessel? A. We had been drifting to leeward; I had to clew up

all the sails on the fore and I kept them on the main to prevent her drifting. 565

Q. Your vessel was drifting all the time? A. O, yes; she was not under command.

Q. When you saw these boats did you signal them to come alongside? A. Yes, I signaled them to come alongside.

Q. Did you then inquire for the steamer and learn that she had gone down? A. Yes, when she came alongside I asked them where was the steamer; they said she had gone down.

Q. How long was it before you got your own wreckage cleared away? A. It was nearly an hour before we got rid of our wreckage. 566

Q. Then you took these men on board from the boats? A. Yes.

Q. Were there among them part of the crew of the steamer? A. Yes.

Q. And did you then, when the fog cleared a little more, detect with your glasses rafts, and a life-boat, in the vicinity? A. I did, one more boat, and several rafts.

Q. You went up to the masthead, I believe, to look yourself? A. I Yes.

Q. And there it was you saw them? A. Yes.

Q. Did you call for volunteers to rescue the boats and rafts? A. I did. 567

Q. And the French sailors manned one boat and some of your own men manned another? A. Yes.

Q. And the boat and nine of the rafts were brought in and the people taken on board? A. Yes.

Q. How many in all were rescued? A. 165.

Mr. Justice Barnes: How many crew and how many passengers? A. I do not remember exactly; I think it was 44 passengers.

Q. And how many crew? A .The remainder were sailors and firemen.

568 Q. One hundred and twenty-one that would be? A. Yes, I think that is correct.

Q. Forty-four passengers? A. Yes.

Sir Robert Reid: Was the quartermaster of the steamer one of those who were saved? A. Yes, one of the quartermasters; at least he said he was.

Q. Did you have some communication from him; did he make some statement to you with regard to his own ship?

The question was objected to.

Mr. Justice Barnes: You cannot have any state-
569 ment.

Sir Robert Reid: I am not asking for a statement; I am asking whether a statement was made.

Mr. Justice Barnes: You may ask that.

Sir Robert Reid: That is all.

Q. Was the second purser of the steamer also among the rescued? A. He was one of the survivors; yes.

Q. Did he also make a statement to you? A. Yes.

Q. And was there one of the engineers of the steamer? A. The fourth; yes.

Q. Did he, through an interpreter, make a state-
570 ment to you? A. He did.

Q. During the afternoon of the 4th July did a steamship heave in sight? A. Yes.

Q. Name the *Grecian?* A. Yes.

Q. Did he agree to land the passengers at Halifax? A. Yes.

Q. And take your ship in tow? A. Yes.

Q. And did you accept the offer? A. Yes.

Q. And you started for Halifax? A. Yes.

Q. Which was about 180 miles away? A. Yes.

Q. There was, in point of fact, another fog while

you were on your way to Halifax? A. Yes, the following morning. 571

Q. And did you use this foghorn then? A. Yes.

Q. Did it answer? A. Yes, sir; there did not seem to be anything wrong with it.

Mr. Justice Barnes: You have not given us at present the exact spot of the collision.

Sir Robert Reid: Where was the collision; tell me? A. The position is down there, about 60 degrees due west off Sable Island; 59 degrees 50 minutes, I think, west longitude.

Mr. Justice Barnes: And what latitude? A. Forty-two degrees 50 minutes, I think.

572

Q. How is that spot with regard to what is known as the Atlantic tack; she was coming from the west? A. From the westward.

Q. To Europe? A. Yes.

Q. How was that with regard to the tack at that time of the year? A. Away north of the usual track.

Q. How much? A. One hundred and twenty miles over two degrees of latitude.

Sir Robert Reid: The man who was blowing the foghorn was Hailey? A. Yes.

Q. And the man steering was—— A. Nordin, at the time of the collision. 573

Q. When you got to Halifax what happened to those two men? A. They left the ship; they ran away.

Mr. Justice Barnes: What was Nordin doing? A. Steering at the wheel.

Sir Robert Reid: He ran away when they got to Halifax? A. Yes.

Q. Did you take steps against them? A. I did.

Q. You got them put in prison, did you? A. Yes.

574 Q. Since then what has happened to Nordin? A. I do not know, sir.

Sir Robert Reid: The only thing I want to ask now is what I have not yet asked, I reserved it, viz., the statements made by the petty officers of the ship. If your Lordship says no, I cannot say anything more.

Mr. Justice Barnes: If we see them there will be plenty of opportunity of putting it to them and recalling them.

CROSS-EXAMINED BY MR. PYKE:

575 Q. I did not catch your answer as to the number of those on the *Bourgogne* who were saved? A. One hundred and sixty-five, sir.

Q. How many of those 165 were saved by you? A. All of them.

Q. Were they saved in your boats? A. No.

Q. And your rafts? A. No, the steamer's boats and rafts.

Q. When you say saved by you, you mean they were taken on board your vessel and towed by the *Grecian* into Halifax? A. Yes.

Q. That is what you mean? A. Yes.

Q. But you never put any boat at all into the
576 water, did you? A. No, we did not.

Q. And you never manned any boat in the water? A. Yes.

Q. In the water? A. Yes.

Q. Did the boat go away from your ship's side? A. Yes.

Q. How many men in it of yours? A. Six.

Q. How many were in the boat all together. A. I think it was seven.

Q. Would the other be *La Bourgogne's* men? A. Yes.

Q. What happened to this boat that you say was

so manned with six of your crew—did she pick any of the crew up of *La Bourgogne?* A. Yes. 577

Q. I understood you to say just now in answer to me that no boat of yours was put into the water? A. That was not my boat.

Mr. Justice Barnes: That was one of the boats that came up alongside.

Mr. Pyke: That was *La Bourgogne's* boat? A. Yes.

Q. But apart from that, none of your crew were put into any of your boats or into any of *La Bourgogne's* boats? A. Not apart from that.

Q. So that the whole of the 165 were, with the exception you have mentioned, brought alongside in *La Bourgogne's* boats, or on their rafts? A. Yes, we had to tow the rafts home. 578

Q. How long after the collision was it that your collision bulkhead was holding—was intact? A. A few minutes.

Q. And you found your ship was making no water? A. No; not at that time.

Q. She was making no water at all at that time—that is what you mean, I think? A. Yes.

Q. And consequently you knew that there was no immediate danger? A. No, I did not know that.

Q. You concluded that there was no immediate danger, did you not? A. I concluded that she was not sinking—that there was no immediate danger of her sinking just then. 579

Q. That being so, in the meantime you heard the whistles of *La Bourgogne?* A. Yes.

Q. Did the whistles sound as though they were being smothered, after one or two of them? A. Only the ordinary sound of a whistle—a syren whistle.

Q. After the first few whistles, did the sound indicate to you that there was something in the

580 whistle, or something which was causing the sound to be smothered? A. The last sound sounded kind of peculiar.

Q. As though the vessel were sinking? A. No, I did not think that.

Q. What was there peculiar about the sound of the whistle? A. It sounded kind of harsh.

Q. What did that convey to your mind, Captain? A. It did not convey anything.

Q. Did you consult with the mate about it? A. No; I said to the mate that the steamer had concluded we are all right, and she has gone on her way.

581 Q. Did it sound as though the vessel were in distress, or sinking? A. No, that did not strike me at the time.

Q. What did you think she was whistling for? A. I thought she was looking for me.

Q. How long after the collision was it that this hoarse-sounding whistle was heard by you? A. I suppose about forty minutes.

Q. Forty minutes? A. I think so.

Q. So that that vessel had been sounding for something like forty minutes after the collision? A. Yes, but she was going away all the time.

Q. The sound was going away, was it? A. She
582 was recrossing our bow.

Q. Was she getting nearer? A. At first she seemed to be getting nearer us, then she seemed to be getting further off.

Q. Do you seriously mean to say that you did not think that *La Bourgogne* was seriously damaged by this collision? A. I do mean to say that; yes.

Q. You see you have placed the vessels, in answer to a suggestion of my Lord's, as they came together in collision? A. Yes.

Q. At an angle of about three points—I think I

am right in saying that is what you meant to convey by this picture? A. Four points. 583

Q. You say *La Bourgogne* was going fast? A. Yes.

Q. And you were going what? A. About four knots.

Q. You have a very sharp stem, I see by the photograph, have you not? A. She has a long overhang.

Q. And a very sharp bow, has she not? A. Yes.

Q. The *Bourgogne* was a very large vessel of something like 8,000 tons? A. Over 7,000, I think.

Q. Going, as you say, very fast, was not the very first thing that occurred to your mind that the result of the collision must have been very serious to her? A. No, sir; it did not, because she was going so fast. 584

Q. Your vessel's damage was twenty-five feet abaft the stem? A. Yes, that is so—not abaft the stem—from the figurehead, I said.

Q. The damage was that the whole of the stem was set back, was it not, the whole of your bow? A. It was torn away.

Q. Was it not set back as well? A. Yes, set back as well, but the stem was torn away.

Q. But the bow was set back? A. Yes.

Q. Did you know that at the time that you examined your bulkhead? A. Oh, yes. 585

Q. Did not that again convey to your mind that you must have come with great force into the bow of *La Bourgogne?* A. Yes; but a steamer going so fast I did not think we could strike her hard enough in any one place to do her much injury.

Mr. Justice Barnes: You say going so fast—what speed actually do you think she had? A. Well, I concluded she was going between fifteen and twenty knots.

Mr. Pyke: You say you did not take the whistles

586 for a signal of distress? A. No, sir; I certainly did not.

Q. Did you take her guns and her rockets for signals of distress? A. Well, the gun is very often used on the banks of Newfoundland as a fog signal.

Q. This was not a fisherman—this was a vessel of 8,000 tons nearly? A. Yes, I know, but I was not sure it was from her at the same time.

Q. Do you really mean to tell this Court that this gun or these guns were not from this vessel? A. I am not sure of it, and I certainly did not think she was sinking.

587 Q. Never mind whether you thought she was sinking—do you seriously mean to convey that you were not certain that this gun was from the *Bourgogne?* A. I do.

Q. Had you any serious doubt about it? A. Well, as a matter of fact I thought very little about it.

Q. How many times did you hear the guns? A. Once.

Q. Only once? A. Only once.

Q. How many times did you see a rocket or hear a rocket? A. I did not see it at all.

Q. You heard? A. No; one of the men said they saw the flash of a rocket.

588 Q. How many times? A. Once.

Q. You know, I suppose, Article 31 of the Rules, do you not, for the Prevention of Collisions at Sea? A. I do.

Mr. Justice Barnes: Is this case under the new rules?

Mr. Pyke: Yes, my Lord.

Mr. Justice Barnes: The rules are the 1st of July; this was the 4th.

Mr. Pyke: The 4th.

Q. Do you know this one: "When a vessel is in distress and requires assistance from other vessels, or from the shore, the following shall be the signals to be used or displayed by her, either together or separately, in the day time a gun or other explosive signal, fired at intervals of about a minute?" A. Yes, she only fired one. 589

Mr. Justice Barnes: Do you say the man saw, or that he heard, a rocket? A. No; one of the men said he saw the flash of a rocket.

Mr. Pyke: I want you to be a little careful about this; did you hear any rockets yourself? A. I did not, sir.

590

Q. Do you know whether more than one rocket was seen or heard from *La Bourgogne* on your vessel? A. I do not.

Q. Have you inquired—or perhaps you did not think it a matter of any interest? A. Oh, yes, of course, I only heard them say they saw the flash of one rocket. We sent up several in reply. We answered with several rockets afterwards ourselves.

Q. What did you do that for? A. Because we ourselves were in distress.

Q. Did you think that rocket a signal of distress—the rocket from the *Bourgogne?* A. I did not.

Q. Why did you not think the rocket a signal of distress? A. Because I thought if she had been in distress she would have stopped—a vessel that is going away would not be likely to be in distress, I did not think. 591

Q. Why did you think that she was firing a gun or sending up a rocket if she was going away, and not in distress? A. She was going away.

Q. If she was going away and not in distress, what is your idea about it—have you thought about it at all? A. Well, I have said that I did think she was looking for me.

592 Q. Running away from you? A. When I first heard her signals—you were asking—when she ran away I concluded she thought we were all right and had gone on her way.

Q. Is that why you think she was firing her rocket, or firing a gun? A. I beg pardon, what was your question?

Q. You say you thought when she was going away that she thought you were all right? A. When I did not hear any more of her signals I thought she had gone on her way.

Q. When did you hear the rockets and gun—the early part or the latter part? A. No; the latter
593 part.

Mr. Pyke: You told my Lord that there was about thirty-five minutes after the collision? A. Yes.

Q. How long after the collision would it be that the fog cleared, and you could see the two boats you have mentioned? A. About an hour as near as I can tell.

Q. How long would it have taken you to have lowered a boat into the water? A. A few minutes.

Mr. Justice Barnes: Why did you not do it? A. Sending a boat away from a ship in a thick fog, when the ship is in a sinking condition, not know-
594 ing where the other vessel was, and not knowing whether she was in distress or not, I should think it would be madness.

Mr. Pyke: Supposing you had thought that that vessel was sending up signals of distress, am I to understand you would not have lowered a boat? A. Most decidedly.

Q. You would not? A. I would if I thought I could have found her.

Q. I must have an answer better than that. If you had considered these signals of the whistles,

the gun and the rocket, as signals of distress, do you as an Englishman suggest that you would have hesitated in lowering a boat? A. I certainly would not have hesitated if there had been any chance. 595

Q. There was nothing whatever in the condition of your vessel to prevent that, was there? A. Oh, yes, there was.

Q. Having regard to the condition of your vessel, if you had known that the *Bourgogne's* sounding her whistle, or sending up these rockets or firing her gun as signals of distress, would you have hesitated to put a boat in the water? A. No, I would have sent one, and kept the other for myself. 596

Mr. Justice Barnes: Do you mean that you thought, from what you saw and heard, that she was not in distress, but was looking for you, and therefore you did not lower a boat? A. That was my impression.

Q. If you had had the other impression you would have attempted to find her? A. Most decidedly.

Mr. Pyke: From the time that you first knew, within a few minutes of the collision, that there was no immediate danger of your sinking, until these boats came alongside, was there the same state of things on board your vessel with reference to her safety? A. I do not quite understand what you mean. 597

Q. You have told me that you found a few minutes after the collision that your collision bulkhead was holding? A. Yes.

Q. And that you knew that there was no immediate danger of her sinking?

Q. Did that state of things last at least as long as until the boat of *La Bourgogne* came alongside

598 —that was the state of things when the boats came? A. Yes, of course.

Q. And as a matter of fact, the bulkhead lasted until you were brought into Halifax? A. Yes; but there were other dangers—the wreckage, and the anchor over the side. All the wreckage hanging over the side was likely to punch a hole in the ship at any moment.

Q. What do you mean by other dangers? A. The wreckage hanging over the sides, the spars and anchors—the starboard anchor was torn away.

Q. I understood you to tell me just now that there was nothing in the condition of your vessel
599 that would have prevented your lowering a boat? A. I did not say that.

Q. Had you considered that the signals from *La Bourgogne* were signals of distress—do you wish to correct that?

Mr. Justice Barnes: He did not say that.

Mr. Pyke: Is that right or wrong? A. I am trying to explain the matter as plainly as I can. There were other dangers except the bulkhead giving way.

Q. Was there anything in the condition of your vessel to have prevented you launching a boat to
600 save those on board *La Bourgogne*, had you known that her signals were signals of distress? A. Yes, there were things to prevent it, but we would have done it all the same.

Q. Then there was nothing to prevent it? A. Yes; because my ship was likely to go down at any moment. Nevertheless, if I had known the steamer was going to sink, I would have launched one boat in any case.

Mr. Justice Barnes: Q. What was your ship doing as regards motion during these thirty-five or forty minutes? A. Simply drifting.

Q. How were the sails? A. We clewed up every- 601
thing on the mizzen, and kept everything on the main, to keep her from going astern. There was a heavy head sea on.

Q. Was your foreyard up or down? A. The foreyard was up, but the sails were all torn away.

Q. The foresail? A. The foresail was gone. The spars as they came down took all with it. All the sails were torn away from the foremast.

Mr. Pyke: How long did it take you to slip your anchor? A. It took us quite a little while, because there was a plug in the hawser pipe, and we had to cut that out.

Q. How long? A. I do not know exactly. 602

Q. Can you give us an idea? A. Well, it took us an hour.

Q. As long as that? A. The hawse pipe was torn away, and the chain was hanging over the jacket plate.

Q. What time was it the first boat came alongside? A. It was shortly after it cleared—I could not say exactly.

Q. About how long after the collision? A. A little over an hour.

Q. Did you then think of sending any boats to the rescue? A. Well, the men reported that the steamer had gone down. I asked them when, and 603
they said she sank in ten minutes, but of course I knew that was not so.

Q. Apart from the question of whether the vessel had sunk or not, you know it could not have sunk within ten minutes because you had heard the gun fired and the rockets fired, and so on? A. Yes, that is true.

Q. That was about twenty minutes before the boat appeared—you had heard the gun and the rocket—twenty or thirty minutes? A. As near as I can tell.

604 Q. Although the vessel had sunk, did it then occur to you to send a boat, to send a boat to try and pick up any who might be in the sea? A. I did not send a boat. I sent up aloft to see if there was any wreckage round, and then I sent the boats.

Q. Those were *La Bourgogne's* boats? A. *La Bourgogne's* boats. There were two long boats in the water. *La Bourgogne's* boats were in the water —the boats that came alongside with the people on board.

Q. But apart from that one boat you put these six men into, you never, you told us, put any of your own boats into the water, or lowered a boat of your
605 own? A. No.

Mr. Justice Barnes: You sent one of *La Bourgogne's* boats with six of your men? A. Yes.

Q. What became of the other of *La Bourgogne's* boats at that time? A. She was away with some of the French crew.

Q. You mean when they came they went off again to look for others? A. Yes.

Q. The same as the boat with the six men? A. Yes.

Q. Did some of them come on board with you from the first two boats? A. From the first two
606 boats they all came on board.

Q. Then you sent six of your men and one of theirs in a boat? A. Yes.

Q. Who went in the other boat? A. The Frenchmen, they went and towed the raft alongside.

Q. How long after they got on board? A. Oh, a few minutes.

Q. Do you mean after you had looked around to see if there was anything more? A. Yes; then finally I sent my men out to search, and they were away four hours searching for other wreckage or anything.

Mr. Pyke: It comes to this, that *La Bourgogne's* 607
boats, leaving out the boat you put the six men in—
that the other boat from *La Bourgogne* brought the
people who were in them at the time they first came
alongside? A. Yes.

Q. Put the men on board? A. Yes.

Q. And again went away to try and pick up other people? A. Yes.

Q. But you never assisted in any way by putting a boat in the water of your own to do the same thing? A. We had boats enough—the three boats of *La Bourgogne* were quite sufficient.

Mr. Justice Barnes: I thought you said there 608
were only two boats? A. There were three—two
of them came first, and another one afterwards.

Q. How long? A. The other one came about a quarter of an hour after the other two.

Mr. Pyke: Now about your speed. What was the length of your vessel? A. Two hundred and forty-nine feet.

Q. Is she a full rigged ship? A. Yes.

Q. What is the least speed you can steer your vessel? A. It depends upon the sea.

Q. With such a sea as there was on this night, this morning? A. Three and a half or four knots. 609

Q. As a matter of fact you were going, were you not, at the time of this collision, between four and five? A. About four knots—hardly that.

Q. Was it so thick at the time of this collision that you could not see the man on the lookout? A Oh, no; I could see him.

Q. Could you? A. Yes; barely.

Q. Have not you said that it was so thick that you could not see the man on the lookout? A. I do not remember having said that. I may have

610 said I could hardly see the man on the lookout. It was very thick.

Q. Was it thicker at the time of the collision than it was at four o'clock? A. I think it was about the same.

Q. Did you write to your owner this: "At four it was really so thick that I could not see the man on the lookout"? A. Maybe I did.

Mr. Justice Barnes: Are you going to put that in?

Mr. Pyke: If he admits it I shall not put it in.

The Witness: You may see a man at a distance in a fog and not see him very plain.

611 Q. Did you write to your owners on the 6th of July: "At four it was really that thick that you could not see the man on the lookout"? A. If I wrote that it was correct. It was a good while after the accident.

Mr. Pyke: I put this in.

The letter was handed up and read as follows: "At about 1.30 A. M. the fog shut down very thick, and at 4 it was really that thick that I could not see the man on the lookout."

Q. You have no doubt now, have you, that you
612 did write that? A. Well, if I wrote that it is correct.

Q. If that was the state of things at four, and you have told us it was the same at five, and your vessel would have steerage way with between three and four knots, why were you going faster than that? A. We were not going faster than that.

Q. Than three or four knots? A. We were going four knots.

Q. Is it not the fact that you were going between four and five knots? A. No, sir; she was going four.

Q. You heard my question? A. Yes, I heard your question. 613

Q. When did you reduce your sail? A. We reduced sail the previous day.

Q. Then had you been sailing under the same sail that you were sailing under at the time of the collision for some considerable time? A. No, we took the cross-jack in at four o'clock.

Q. Did you give orders to take the cross-jack in at four? A. I did.

Q. Had it been done? A. Yes.

Q. How long would it take you to take the cross-jack in? A. About one-quarter of an hour—more than that. 614

Q. You mean a minute or two or three more or less—is that what you mean? A. Yes.

Mr. Justice Barnes: Do you mean four o'clock on the morning of the collision? A. Yes.

Mr. Pyke: Were the men on the cross-jack when the whistle of *La Bourgogne* was first heard? A. I believe they were.

Q. Had they finished taking in the cross-jack before the collision? A. Oh, yes.

Q. How long? A. I do not know exactly.

Q. They were on the cross-jack yard when the whistle of *La Bourgogne* was heard—how long was the whistle of *La Bourgogne* heard before the collision? A. About ten minutes. 615

Q. If you gave orders for it to be taken in at four o'clock, how do you account for that state of things? A. It was clewed up, but it was not furled immediately afterward.

Q. And that is what you call sailing under reduced canvas, I suppose, with the cross-jack taken in? A. Yes, and the amount of wind we had, and it was certainly reduced.

Q. That is what you mean by "under reduced canvas"? A. Yes.

616 Q. The cross-jack taken in? A. Yes.

Q. Take the foremast, what sails were there taken in, if any? A. The fore royal.

Q. Then all the sails were set on the foremast with the exception of the fore royal? A. Yes.

Q. Now the mainmast? A. The main royal, and main top mast staysail.

Q. All set except the main royal and main top mast staysail? A. Yes.

Q. Mizzen mast? A. Royal, cross-jack, and spanker.

Q. That is what you mean by saying that your vessel was running under reduced canvas? A. Yes.

617 Q. I must put it to you, that under the reduced sail, as you have described, your vessel was going at the rate of between four and five knots an hour? A. No; we were hardly going that; according to the accounts in the log she was only going four.

Q. At any rate she could have been going, and the vessel would have been under command if she had been going three or four? A. Yes.

Mr. Justice Barnes: What sail had you forward of the foremast? A. Three head sails.

Q. Any staysails set at all? A. One mizzen topmast staysail.

618 Q. That was on? A. Yes.

Mr. Pyke: I do not wish there to be any misunderstanding about this. The orders to the helmsman had been to keep her full and by, originally, had not they? A. To keep her close to the wind.

Q. Before that the orders had been full and by? A. No, close to the wind all the night.

Q. Then the orders had been to keep her close to the wind? A. Yes.

Q. That was for the purpose of heading the Gulf Stream? A. Yes; and deadening her speed.

Q. Was not that for the purpose of heading the Gulf Stream? A. Yes; and also for deadening the ship's speed. 619

Q. Supposing it had been advisable to reduce that vessel's speed to three or four knots you could have easily have done it, I suppose, by still further reducing your canvas? A. We were bound to keep enough way on her to keep away from another ship.

Q. But I say you could have reduced your canvas to bring her to three or four knots? A. Yes.

Q. What would you have done? A. What, to reduce the canvas?

Q. Yes. A. Taken in some more sail.

Q. Taken off the mizzen staysail? A. Yes; and taken off the top gallant sail. 620

Q. Supposing it were necessary to at once deaden the way of your vessel, what could you have done, as quickly as possible, to have deadened the way of your vessel without altering her course? A. I could have thrown her yards aback.

Q. How long would that have taken? A. Five minutes.

Q. Now to proceed with this letter—this is the sentence I read to you—"At 4 it was really that thick that I could not see the man on the lookout. Our foghorn was, of course, kept going at regular intervals, and under reduced canvas our ship was going about four or five knots through the water." 621 Is that right? A. Yes, that is right.

Q. "At 5 A. M. we heard a steamer's whistle on our port or weather bow, and in a few minutes the steamer crashed into us, going like a streak of lightning." You say something about your master's log. I call for that log. (The same was produced.) Would you answer me this? How long did it take you to clew up the courses? A. The three of them, five or six minutes.

Q. "At 1.30 it shut down thick, the wind, how-

622 ever, began to moderate down, at 4 A. M., the fog became very dense, we stowed the cross-jack and kept ship very close to the wnid, going about four or five knots through the water. (Course W. N. W. wind S. W.) Is that right? A. Whose log is that?

Q. The ship's log, is the ship's log right? A. The mate's log will give it and the exact knots for the hour.

Q. Is the mate's log right? A. Yes, the mate's log is right.

Q. Then it goes on: "Our fog horn was kept going regularly every minute. At 5 A. M. we heard a steamer's whistle on our weather or port beam,
623 which seemed to be nearing us very fast. We blew our fog horn and was answered by the steamer's whistle, but all of a sudden the steamer loomed up through the fog on our port bow, and crashed into us, going at a terrible speed. Our foremast and main royal mast came down, bringing everything with it, and it proved on examination that our ship was very badly damaged. Her bows were completely cut off, the plates broken and twisted in every conceivable shape. However, the ship was floating on our collision bulkhead so there seemed to be no immediate danger of her sinking. We set to work at once to get the boats in readiness, and
624 to clear away the wreckage, also to slip the starboard anchor, which was hanging over the bow, and in danger of punching a hole into the ship. We heard the steamer blowing his whistle in coming back, and answered with our fog horn. Then the steamer threw up a rocket, and fired a shot. We also threw up some rockets and fired several shots, but neither saw or heard any more of the steamer. Shortly after or about 5.30 the fog lifted a little and we saw two boats pulling towards us with the French flag flying." Now you say the vessel *La Bourgogne* was about 120 miles to the

northward of the track—liners very often go as far north of the track as the *Bourgogne* was on, do they not? A. I do not know. I do not think so. 625

Q. What was the *Grecian* doing there, she is one of the Allan Line? A. She is not a liner; she is a freight boat.

Q. One of the Allan Line, is she not? A. Yes; but not a liner; she was coming out in ballast, seeking.

Q. You mean she was not a passenger boat? A. She was not a passenger boat.

Mr. Justice Barnes: Which way was she going? A. She was going to the westward.

Mr. Pyke: The Allan Line—what are they, Glasgow or Liverpool? A. She was coming from Glasgow, bound for New York. 626

Q. Now about the fog horn you were blowing; it was being blown at less intervals than a minute, was it not? A. Yes.

Q. Do you think you were getting two signals into the minute? A. I beg pardon.

Q. How many of the fog signals were you getting into the minute, do you think? A. Well, they were a little less than a minute interval; we blew a signal as near as we could tell at less than a minute interval.

Q. How much less than a minute can you tell? A. A few seconds. 627

Q. What sort of interval was there between the blasts and the signal? A. Between the two blasts?

Q. Yes. A. About thirty seconds.

Q. And how long were the blasts? A. About six or seven seconds.

Q. Was that after you had sent the mate forward to correct the man who was sounding the fog horn? A. Yes.

Q. He had been blowing the blasts too long before then? A. A little too long, I thought.

628 Q. How long do you think they were before they were corrected in that way? A. Eight or nine seconds.

Q. What is your view about the nature of the blasts that you sound for a vessel on the port tack; are the blasts long blasts or short blasts? A. Well, two short blasts; the rule does not say they are to be very long or very short; it says two consecutive blasts.

Q. Did you mean them to be long or short? A. I meant them to be medium, not too long or not too short—a matter of judgment.

Q. Did you intend them to be prolonged blasts
629 or short blasts?

Mr. Justice Barnes: He has given us the length, you know; what he intends does not matter; he was obliged to use a mechanical fog horn, was he?

Mr. Pyke: Yes, Article 15 says: "to be provided with a horn to be sounded by mechanical means."

Mr. Justice Barnes: It does not say she is bound to use the mechanical fog horn.

Mr. Pyke: She is to be provided with it.

Mr. Justice Barnes: It does not say she is to use it; I suppose a mechanical fog horn sounds about the same length as a human blasts; it does not say that it is to be a prolonged blasts.

630 Mr. Pyke: No, it does not; it does not say what sort of blasts it is to be.

Q. However, you say you were blowing the fog horn six or eight seconds after corection, after blowing from eight to nine before correction? A. Yes.

Q. It was not until after you had heard the steamer's whistle that you sent the mate forward to get the way in which the horn was being blown corrected? A. No, because up to that time he was blowing it all right.

Q. How many times had he blown it wrong? A.

I suppose once or twice; perhaps being anxious to 631
produce a great volume of sound; I thought he blew it a little too long, that was all.

Q. All he has to do is to turn a handle? A. That is all.

Q. And he was turning it too slowly? A. No, he kept turning a little too long; I thought he made the blasts a little too long.

Q. And the effect of your order was that he turned it a little less long? A. Yes, that was it.

Q. How many signals after correction did you then get in a minute? A. Well, I did not count them, but I should think eight or nine.

Q. About eight or nine in the minute? A. Oh, 632
in the minute.

Q. In the minute; attend to the question. After you had sent forward the mate to tell the man who was attending to this fog horn not to sound the blasts so long, and he corrected it accordingly, how many signals did you get in the minute? A. He did not blow it any oftener than before; simply shortened the blasts, that was all.

Mr. Justice Barnes: You had given eight or nine signals after hearing the other ship? A. Yes.

Mr. Pyke: Did you buy a new fog horn at Halifax? A. I did.

Q. Is this one all right? A. Yes, it was broken 633
in the collision somewhat, but the machinery is not injured.

Q. The fog horn is now as good as it was then? A. Just the same as it was at the time of the collision—after the collision, rather.

Q. Why did you get a new fog horn? A. Because I knew there was going to be litigation; I knew my owners had sued the company for damages and I knew that this fog horn might possibly be asked for, and another thing, the fog horn is partly damaged.

634 Q. The litigation had not begun when you left Halifax, had it? A. Yes.

Q. But you took on board with you the old fog horn? A. I took it with me as far as Philadelphia, and when I left the ship I took the fog horn with me.

Mr. Justice Barnes: Where did you leave the ship? A. In Philadelphia.

Mr. Pyke: What sort of fog horn did you get; what was the new one like? A. Exactly like this only it is manufactured in Birmingham.

Q. Better? A. I could not get one just like this.

Q. Is it better, do you think? A. No; it is not so good.

635 Q. Although it came from Birmingham, it is not so good? A. No.

Q. You first heard this steam whistle of *La Bourgogne* about ten minutes before the collision? A. Yes.

Q. Rather more, was it not? A. I think so, sir.

Q. The proper way to describe it would be from ten to fifteen minutes before the collision, would it not? A. I could not tell exactly.

Q. That gives a margin which would correctly describe the time, ten or fifteen minutes before the collision, without being precise to a minute, you told us it was more than ten? A. Yes.

636 Q. Would it be correct to say that it was between ten and fifteen minutes before the collision that you first heard the sound of *La Bourgogne's* whistle? A. It is very hard to tell; I did not look at the clock.

Q. Would it be about it, approximately? A. Something over ten minutes, I thought.

Q. Now will you tell us to the best of your ability where the sound came from? A. I thought when I first heard it it was about the beam or a mile forward of the beam, although of course it is very hard to locate it.

Q. You say in your letter "on our port or weather bow." Is that right? A. Yes; the weather bow—or the beam, which? 637

Q. It is our port or weather bow? A. My letter book is there.

Q. Would it be correct to say that the sound was about three to four points, or three points, on the bow? A. Well, I judge it more than that, that it was more abeam than that; that was my opinion.

Q. Is the lookout man here? A. I do not think so; no.

Q. The lookout man is the man who has to do all this with the fog horn, is he not? A. Yes.

Q. Let me understand what he has to do; he has to keep a lookout; he has to sound this thing by turning the handle, and he has to sound a bell if he hears a sound? A. No, no bell. 638

Q. Supposing he heard a sound, would he report it? A. He reports it to the officer on the quarter deck.

Q. By word of mouth? A. By word of mouth, yes.

Q. The lookout man has to do this? A. Yes.

Q. You say it was more than three points; how far off do you think it was; you told me, my learned friend, you could not tell him; give us an idea from the sound? A. I could not tell that.

Q. Did it appear to be a long way off? A. It would depend upon the state of the syren; I could not tell how far he was off. 639

Q. You can form an idea? A. No.

Q. In your view was it close, or was it a good way off? A. It was a good way off according to my idea.

Q. A good way off? A. I thought so.

Q. And the second whistle, did that appear to you to be nearer? A. It had come nearer; it sounded more distinct.

640 Q. It was nearer each time, I suppose? A. Yes.

Q. And did it appear to be coming more ahead each time? A. It did.

Q. Was your wife on board? A. She was.

Q. After the sound of the whistle was heard did your wife dress and come on deck? A. She was already dressed.

Q. Owing to the approach of the sound did she come on deck? A. She was on deck; she was the first to hear the steamer's syren.

Q. You knew then that this vessel, after the first blasts, was approaching you? A. Yes.

Q. And that she was crossing your bow? A. I
641 did not know that.

Q. You told us she was getting narrower, getting more ahead, you told us? A. She seemed to be; yes.

Q. Then you knew she was coming in a direction across your bow? A. Well, I took it for granted she would keep out of my way.

Q. Hearing the whistles getting nearer and coming more ahead, you knew she was coming in a position to cross your bow? A. Yes.

Q. Under those circumstances, did not you consider it a prudent thing to check your speed? A. No, sir; Article 21 says you must not do that.

642 Q. How many times altogether did you hear the whistle of *La Bourgogne?* A. Seven or eight times.

Q. Is that as often as you had blown yours? A. We had blown ours oftener.

Q. How many more times had you blown yours, do you think; you heard his seven or eight times; how many times oftener had you blown yours? A. Three or four times, perhaps; I am not quite sure as to that, but we blew it oftener than she did.

Q. Where was the vessel when she appeared in sight? A. About a point on our port bow.

Q. And heading in the direction—— A. Of us 643
—coming right towards us.

Q. She seemed to be coming straight on? A. Not straight on—at an angle.

Q. I mean keeping the same course and bearing? A. She appeared to be.

Q. If she was one point on your bow heading as you have put them at the time of the collision, and you heading in the same way, she could not have had any very great speed on her for you to strike her on the forerigging? A. Well, she was very close to us.

Q. It does not matter how close, does it? A. Does it not? 644

Q. How far off was she? A. About a ship's length of our ship.

Q. I think you said 200 feet? A. About that.

Mr. Justice Barnes: What part of her was a point on your bow? A. Her bow.

Mr. Pyke: What, quite the fore part of her bow? A. Yes, we could only see her bow first.

Q. What part? A. Her stem.

Q. That was the first part you could see of her? A. Yes.

Q. Her stem? A. Yes.

Q. And that was a point on your bow? A. Yes; 645
about that as nigh as I could tell; I did not take the bearings; you know, sir, there was no time for that.

Q. You say you could not read her name; the mate read her name, did he not? A. Not that I am aware of.

Q. Did you hear the mate examined at Halifax, on the Board of Enquiry? A. I think I did; yes.

Q. Did not you hear him say that he read the name, but he could not remember it? A. I think he said that he read "Havre"; we could all read

646 that, but we could not read her name; not one of us knew what ship it was until after the boat came alongside of us.

Q. You put Haley in prison, I understand? A. Yes.

Q. He deserved it? A. Yes.

Q. Where is he now? A. I do not know.

Q. Have you taken any steps to find out? A. Our solicitors have.

RE-EXAMINED BY SIR ROBERT REID:

Q. *La Bourgogne's* boats, were they larger or smaller than yours? A. Larger; two of them
647 much larger.

Q. You have said that there were other dangers —the wreckage hanging over the side, and the anchor which might have knocked a hole in the ship? A. Yes.

Q. Just in a sentence or so explain the nature of the dangers you meant at the time? A. The ship was rolling with a long roll in the trough of the sea, and every time she rolled to windward the anchor would punch her side, and also the shars hanging over the starboard side would punch her every time she rolled.

Q. Did you consider that a serious danger all
648 the time? A. I did.

Q. And how long was it before you shipped the anchor? A. We were about an hour.

Mr. Justice Barnes: And the spars, when did you get rid of them? A. We did not get rid of the spars until nearly noon; we had to cut all the wires.

Sir Robert Reid: Was there any iron spar; there was an iron bowsprit; was that one of the spars? A. Yes.

Q. That you were entangled with? A. It was under her bottom.

Q. And any other spar? A. No; the other spars were wood. 649

Q. I want you to tell us more about one answer you gave. You said that after the French and your other boat had gone out that you sent another boat to search for her—or something of that kind you told us? A. Yes.

Q. What was that? A. That was a boat manned by my men.

Q. Was that one of the French boats? A. Yes; it was the small one of the *Bourgogne*'s boats; I sent her to search for any more wreckage or any rafts or any one floating round.

Q. How long were they away? A. They were about four hours. 650

Q. And when did you send this boat which was away four hours looking for wreckage? A. After we got the first raft alongside; after we got the rafts that we saw first.

Q. That was the smallest boat of *La Bourgogne?* A. Yes; the handiest.

Q. Was she larger or smaller than your boats? A. She was a little smaller than our life boat.

Q. But larger than the others? A. Yes.

Q. I think you told us all about the reducing of the sail. In regard to the sea—I now come to the time when the collision itself took place—was there a head sea? A. There was a heavy westerly sea, sir. 651

Q. Remembering that, I hope I may put it in this form; you were on the port tack, and of course would have to keep out of the way of a vessel on the starboard tack? A. Yes.

Q. Under those circumstances did you think it was safe at the time to take off more sail? A. No; I did not because the ship would have been too slow in answering her helm.

Q. In regard to the two blasts for a vessel on the

652 port tack, you have been asked whether they were long blasts or what they were; did you keep them to what you have been accustomed? A. Yes.

Q. To clear other vessels and protect yourself? A. Yes.

Q. That fog horn was a mechanical fog horn? A. Yes.

Q. And you say that you bought a new one at Halifax; what did you do with the old one? A. It is there in court.

Q. What did you do with it, take it out of the ship when you were on the other side of the Atlantic? A. I did.

953 Q. And brought it home? A. Yes.

Q. Did you think it would be required? A. I thought it might be required; I left it in Philadelphia and it was sent on by express afterwards.

Q. It was sent on to the owners? A. To the solicitors.

Q. That was your reason? A. That was my reason; I thought it might be required.

Mr. Justice Barnes: Was the ship repaired at Philadelphia? A. At Halifax.

Q. Where is she now? A. She is on her way out to Valparaiso.

654 Q. You have been taken out of her for the time? A. Yes.

Sir Robert Reid: I will not ask you more than this; in point of fact, was that fog horn tested and examined by the Commissioner at the enquiry? A. It was.

Q. You have said the lookout man is not here? A. Yes.

Q. That is the same Haley you told us about before? A. Yes.

Mr. Justice Barnes: The Elder Brethern would like to hear that fog horn sounded. 655

Sir Robert Reid: I do not know whether the captain can sound it.

The Witness: Yes, I can.

(The captain then sounded the fog horn in court.)

Mr. Justice Barnes: You have not given us the number of your crew? A. Twenty-one, all told, sir.

(Endorsed)—Cross Interrogatories to be propounded to O. H. Henderson.

[SEAL.] 656

DEPOSITION of witness produced, sworn and examined the fourth and fifth days of April, in the year One Thousand Nine Hundred, at the Consulate of the United States of America at Nagasaki, Japan, under and by virtue of a Commission issued out of the Circuit Court of the United States for the Southern District of New York, in certain causes therein depending and at issue, wherein

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CATARINA CASAZZA, as administratrix of the goods, chattels and credits late of Luigi Casazza, late of the City and County of New York, deceased, is plaintiff, 657

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

658

HENRY WUERTZ, administrator of the goods, chattels and credits of late Emile H. Wuertz, late of the City of New York, deceased, is plaintiff,

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

659

ADRIAN REYMOND, as administrator of the goods, chattels and credits of Adele Reymond, late of the City of New York, deceased, is plaintiff,

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

660

CHARLES MAYER, as administrator of the goods, chattels and credits of Henry Mayer, late of the City of New York, deceased, is plaintiff,

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

(In margin.) 661

Charles B. Harris,
Consul of the United States at Nagasaki, Japan,
Commissioner.

GEORGE DES LIONS is plaintiff

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

662

PAULING HENUY, as administratrix of Juliette Cico, is plaintiff,

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE is defendant.

663

as follows:

OSCAR HILLMORE HENDERSON, of Halifax, Nova Scotia, a Master Mariner, aged forty-two years and upwards, being duly and publicly sworn, pursuant to the directions hereto annexed, and examined on the part of the Plaintiffs, doth depose and say as follows:

FIRST.—To the first interrogatory he saith:

My name is Oscar Hillmore Henderson, age forty-two years, residence Halifax, Nova Scotia; occupa-

664 tion, Master Mariner. I have been a mariner for twenty-eight years.

SECOND.—To the second interrogatory he saith:

I was Master of the British ship *Cromartyshire*.

THIRD.—To the third interrogatory he saith:

I have been Master of the *Cromartyshire* for three and one-half years. She was a full rigged iron ship, of 1,462 tons net register.

FOURTH.—To the fourth interrogatory he saith:

She was in the North Atlantic, on the eastern edge of the bank of New Foundland, south of Sable
665 Island, on her voyage from Dunkerque toward Philadelphia, loaded with French chalk, and headed about W. N. W. true. All sail, except royals, cross Jack, spanker and lower stay sail. She was going four or five knots.

(page 3)

FIFTH.—To the fifth interrogatory he saith:

The wind was light from the S. W., with a thick fog. It had been foggy since about two o'clock in the morning, but the wind had been moderating since midnight.

SIXTH.—To the sixth interrogatory he saith:

666 It is rather hard to describe. It was very thick, and I do not think I have ever seen it worse. The vessel was being kept very close to the wind to deaden her headway, and her fog horn was being continually sounded. Two blasts were being blown at an interval of less than one minute. It was a Norwegian fog horn, operated by cranks and bellows.

SEVENTH.—To the seventh interrogatory he saith:

The first and third officers were on deck. The first was on the weather quarter and the third was

on the lee side of the quarter deck. I was also on deck. 667

EIGHTH.—To the eighth interrogatory he saith:

Yes, I heard a steamer syren a little after five in the morning, somewhere forward of the port beam, probably eight or ten times. The intervals seemed to correspond with our signals as near as I could tell. There would be a sould of his syren between every sound of ours. The sound seemed to draw towards the bow.

NINTH.—To the ninth interrogatory he saith:

I sent the Chief Officer forward to regulate the 668 blasts and to make them louder if such was possible.

TENTH.—To the tenth interrogatory he saith:

The first thing I saw was the steamer's red funnels looming up about a point on the bow, and in a few seconds the collision occurred. Our jib boom went in between the steamer's fore rigging. When we came together about twenty-five

(page 4)

feet of our ship's bows were torn away. Fore top mast, yards and everything attached went by the board, and the steamer disappeared in the fog keeping on her course. 669 She was going so fast that I could not read her name. All that I could read was "Havre" on her starboard quarter. I did not know what steamer it was until I got some of the survivors on board, and I found that the steamer was *La Bourgogne*.

ELEVENTH.—To the eleventh interrogatory he saith:

The collision occurred between five and half-past. It was broad daylight.

670 TWELFTH.—To the twelfth interrogatory he saith:

On the port bow. She was headed about E. N. E. true. I first saw her only a few seconds before the collision.

THIRTEENTH.—To the thirteenth interrogatory he saith:

I judged her to be going between fifteen and twenty knots. My reason for judging her to be going so fast is that experience has taught me to judge pretty well by the appearance of the water about how fast a ship is going, and by the time in
671 which she appeared out of sight, and I know she appeared to be going about four times as fast as we were going.

FOURTEENTH.—To the fourteenth interrogatory he saith:

Our boom came first in contact with the steamer's fore rigging, and by the time our stem struck the steamer it must have been somewhere about the bridge. The result to the *Cromartyshire* was that there was about twenty-five feet of her torn away from the figurehead to the last broken beam.

FIFTEENTH.—To the fifteenth interrogatory he saith:

672 "*La Bourgogne* was visible for a few seconds only, because she kept on her course. She disappeared out of sight. I heard several blasts from her syren, and also heard a shot.

(page 5)

SIXTEENTH.—To the sixteenth interrogatory he saith:

After the collision we began to swing our boats out, and got to work clearing away the wreckage.

SEVENTEENTH.—To the seventeenth interrogatory he saith: 673

We laid there until three o'clock in the afternoon, picking up what people we could, and sending our boats over to the scene of the disaster. We picked up 154. We were eventually towed into the port of Halifax by the steamer *Grecian*.

NINETEENTH.—To the nineteenth interrogatory he saith:

(Witness stated that he was unable to answer without first consulting the ship's log book. He was dismissed until the following day, April 5th, 1900, at 10 o'clock A. M.)

674 The collision occurred about sixty miles south of Sable Island, in Lat. 42 degrees 50 minutes N., Long. 59 degrees 50 minutes W. About one hundred miles from the track of European liners recommended by the Pilot Chart.

TWENTIETH.—To the twentieth interrogatory he saith:

I know nothing.

FIRST.—To the first cross interrogatory he saith:

All I know is that the tracks recommended by the Pilot Chart, issued by the United States Hydrographic Office, which lays down the tracks of steamers and recommends sailing ships to keep out of 675 their way. I have never been Master of a steamer.

SECOND.—To the second cross interrogatory he saith:

(page 6)

Seaman William Hailey was on the lookout at the time of the collision. He was the same man who was engaged in sounding the fog horn.

THIRD.—To the third cross interrogatory he saith:

No steps were taken. No one was placed on the yards.

676 FOURTH.—To the fourth cross interrogatory he saith:

Twenty-one. Port watch was on deck. There were ten, but I do not recollect their names.

FIFTH.—To the fifth cross interrogatory he saith: Yes.

SIXTH.—To the sixth cross interrogatory he saith:

I have received letters from the attorneys asking me to give my testimony. I have received two, but the first one has been lost. The other I have here. (Witness produces letter, which is annexed to this
677 commission and marked "Exhibit A.") I have had no instructions to appear and testify in this case from the owners.

SEVENTH.—To the seventh cross interrogatory he saith:

Yes, with the exceptions that on page 11, that part of lines twelve and thirteen which reads "*60 due W. off Sable Island," should be "*60 miles due south of Sable Island," and on page 37, line nineteen, the word "narrower" is used, which should be "nearer."

EIGHTH.—To the eighth cross interrogatory he saith:

678 I know nothing.

OSCAR HILLMORE HENDERSON.

Examination taken, reduced to writing and by the witness subscribed and sworn to this 5th day of April, 1900, before

CHARLES B. HARRIS,
Consul of the United States,
Commissioner.

(Note: On margin of each page is written by hand the following:

CHARLES B. HARRIS,
Consul of the United States,
Commissioner.)

CONSULATE OF THE UNITED STATES OF AMERICA, 679

NAGASAKI, JAPAN.

I, CHARLES B. HARRIS, United States Consul at Nagasaki, Japan, do certify that Oscar Hillmore Henderson, the witness, personally appeared before me on the fourth day of April, at nine o'clock in the forenoon, in the year nineteen hundred, at the Consulate of the United States of America, Nagasaki, Japan, and after being duly sworn to tell the truth, the whole truth and nothing but the truth, did depose to the matters contained in the foregoing deposition, and did in my presence subscribe the same and indorse the exhibit annexed thereto. And I 680 further certify that I have subscribed my name to each half sheet thereof and to the exhibit. And I further certify that Osacr Hillmore Henderson appeared in behalf of the Plaintiff, and that no witness appeared in behalf of the Defendant.

Witness my hand and seal this
fifth day of April, A. D. 1900.

CHARLES B. HARRIS,
Consul of the United States at Nagasaki, Japan,
Commissioner.

(On margin)

Charles B. Harris, 681
Consul of the United States at Nagasaki, Japan,
Commissioner.

682

Exhibit "A."

LAW OFFICES OF
BENEDICT & BENEDICT
68 Wall Street

Robert D. Benedict
Edward G. Benedict
William D. Jones

Dictated. NEW YORK, January 19, 1900.

Capt. O. H. Henderson,
c/o British Consul,
Nagasaki,
683 Japan.

DEAR SIR:—

We recently issued a commission to take your testimony in certain cases which have grown out of the collision of the *Cromartyshire* and *La Bourgogne*, directing the commission to you at Cardiff, Wales. Unfortunately we did not ascertain of your presence there in season to get the commission over before you sailed for Nagasaki, the commission, as we understand, having arrived at Cardiff the day after you sailed. It has been returned to us by the Consul at Cardiff, and we are to-day re-issuing it to the American Consul at Nagasaki. We send this
684 note to you in care of the British Consul, and ask if you will oblige us on receipt of it, by presenting yourself before the American Consul, who will then have the commission, and answer before him the questions therein contained.

Any reasonable expense which you may be put to in regard to the matter we shall be pleased to refund you, if you will let us know where and to whom to send it.

We remain,
Yours truly,
BENEDICT & BENEDICT.

(On margin) 685

Charles B. Harris,
Consul of the United States at Nagasaki, Japan,
Commission.

At the execution of a Commission for the examination of witnesses, wherein

Catarina Casazza, Admr'x, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant,

Henry Wuertz, Adm'r, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant,

Adrian Reymond, Adm'r, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant, 686

Charles Mayer, Adm'r, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant,

George Des Lions, Adm'r, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant,

Pauline Henuy, Admr'x, etc., is Plaintiff, and La Compagnie Generale Transatlantique is Defendant,

this paper writing was produced by the witness, Oscar Holmore Henderson, and by him deposed unto at the time of his examination before 687

CHARLES B. HARRIS,
United States Consul,
Commissioner.

(On margin)

Charles B. Harris,
Consul of the United States at Nagasaki, Japan,
Commissioner.

Commission endorsed.—Opened and filed this 13th day of July, 1900, by order of Judge Brown.—Filed this 13th day of July, 1900.—J. A. S., Clk.

688 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
689 BOURGOGNE," for limitation of liability and other relief.

Upon reading the annexed affidavit of A. Gordon Murray, verified the 13th day of July, 1900, it is hereby

Ordered that the Petitioner or its Proctor show cause at Chambers, Federal Building, Brooklyn, N. Y., on the morning of July 14th, 1900, at 10.30 A. M., or as soon thereafter as counsel can be heard, why a commission containing the Interrogatories and Cross-Interrogatories embodied in the commission to Oscar Henderson, executed at Nagasaki, Japan,
690 on the 13th day of April, 1900, before the American Consul at that place, and duly returned to the Clerk of the Circuit Court of the United States for the Southern District of New York and now on file in the said Clerk's office, should not issue out of this court in this proceeding to retake the testimony of the said Henderson now at San Francisco, California, or consent that the said Commission now in hand be read upon the trial of the issues involved in this proceeding.

Further ordered that service of a copy of this

order and of the affidavits upon which the same is granted, upon the petitioner or its proctor on the 13th day of July, 1900, be sufficient. 691

Dated New York, July 13th, 1900.

EDWARD B. THOMAS,
U. S. J.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 692

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

A. GORDON MURRAY, being duly sworn, says, that he is an attorney and counsellor-at-law and Proctor in Admiralty, with an office at No. 34 Pine Street, in the City of New York. 693

Deponent says that on the 12th day of July, 1900, he received a letter from W. C. Perry of Kansas City, Mo., stating that as Administrator of the estates of the wife and two grown children of his brother John Perry, he had caused suits to be brought, one in the Circuit Court of the United States for the Northern District of Illinois and the others in the Circuit Court of Cook County, Illinois,

694 to recover judgments for the personal effects and property of decedents, which was lost on petitioner's steamer, *La Bourgogne*, which was lost at sea on July 4th, 1898, by reason of the alleged negligence of the petitioner and those in charge of said steamer at the time of her disaster. The said W. C. Perry now requests and authorizes deponent to make such appearances and take such steps as may be necessary to protect his interests and also stating that Capt. Oscar Henderson, Captain of the ship *Cromartyshire*, which ship collided with said *La Bourgogne*, causing the said *La Bourgogne* to sink, thus causing the loss complained of in the afore-
695 mentioned suits, is now in San Francisco, Cal., on board the ship *Large Law*, and that the said Henderson is about to sail thence on or about the 25th day of July, 1900, and that he is anxious to take the testimony of said Henderson before that time, but is stayed from so doing by the order of this Court, dated May 15th, 1900.

Deponent further says that he is acting for one Pauline Henuy, administratrix of Juliette Cicot, deceased, and on October 5th, 1898, brought a suit in the New York Supreme Court against petitioner herein, for causing the death of the deceased, and that on or about the 19th day of January, 1900, a
696 commission to take the deposition of the aforesaid Henderson issued out of the United States Circuit Court for the Southern District of New York, to which the said Pauline Henuy was a party by stipulation, and that said commission has been returned executed and opened by order of this Court, but that the Proctor for the petitioner herein will not consent to read said testimony upon the trial of the issues involved herein.

Deponent says that his information as to the presence and intended departure of the said Henderson is the letter aforesaid received from the said

W. C. Perry, and that the testimony of the said Henderson is necessary to the claimants herein. 697

Deponent further says that he has attempted to get such consent by application to the office of the Proctor for petitioner but has not been able to do so.

Therefore by reason of the fact that the aforesaid Capt. Henderson will soon sail from San Francisco, to be gone an uncertain time and by reason of the further fact that a consent is necessary to read the testimony already in hand deponent asks for an order to show cause, directed to the Proctors for petitioner herein, why a commission containing the Interrogatories and cross-Interrogatories in the previous commission should not issue 698 forthwith to take the testimony of the said Oscar Henderson at San Francisco, California, or else said Proctors for petitioner consent that the aforementioned executed commission be read in this proceeding.

Deponent further says that he verily believes that the parties for whom he is acting have good causes of action and defenses upon the merits to this petition and that no previous application for this order to show cause has heretofore been made.

A. Gordon Murray.

Sworn to before me this 13th day of July, 1900. } 699

[SEAL.] Russel Lord Tarbox,
Notary Public,
County of New York.

Endorsed—Affidavit and order.—Filed July 14, 1900.

700 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

701

Upon the order to show cause herein dated July 13th, 1900, and affidavit of A. Gordon Murray verified the 13th day of July, 1900, annexed thereto and upon motion of A. Gordon Murray, it is hereby

Ordered that a commission issue out of and under the seal of this court directed to the Clerk, Deputy Clerk or other officer of the District Court of the United States for the Northern District of California, to take, in accordance with the law and practice of this Court upon interrogatories and cross-interrogatories presented herewith, the deposition of Oscar Helmore Henderson, as witness on

702 behalf of Pauline Henuy, Administratrix, W. C. Perry, claimants in the proceeding herein, and it is further

Ordered that said commission and deposition when taken be returned by mail to Samuel H. Lyman, Esq., clerk of this court, at his office in the Post Office Building, New York City, New York, United States of America.

Dated New York, July 14th, 1900.

EDWARD B. THOMAS,

U. S. J.

ENDORSED ORDER for commission. Filed July 14, 1900.

Pursuant to the said order a commission issued 703
from this Court annexed to which was attached the same interrogatories and cross-interrogatories as are embodied in the foregoing commission to which George E. Morse, Esq., a U. S. Commissioner, and Clerk of the U. S. Dist. Court for the Northern District of California, made the following return:

IN THE DISTRICT COURT OF THE UNITED STATES,

IN AND FOR THE SOUTHERN DISTRICT OF NEW YORK.

704

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

Be it remembered, That on Thursday, the 26th day of July, A. D. 1900, pursuant to the Commission hereunto annexed, at the office of George E. Morse, Esq., Room 63, Appraisers' Building, northeast corner of Sansome and Washington Streets, in the City and County of San Francisco, State of California, personally appeared before me, George E. Morse, United States Commissioner, to take acknowledgments of bail and affidavits, etc., and Clerk of the United States District Court for the Northern District of California, Oscar Helmore Henderson, a witness on behalf of the claimants in the above-entitled matter. 705

706 And the said witness, having been by me first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth, in the cause aforesaid, did thereupon depose and say as follows:

DEPOSITION of a witness, produced, sworn and examined the 26th day of July, in the year one thousand nine hundred, at the office of George E. Morse, Esq., Commissioner and Clerk of the United States District Court for the Northern District of California, at Room 63, Appraisers' Building, in the City and County of San Francisco, State of California, under and by virtue of a Commission issued out of the District
707 Court of the United States for the Southern District of New York, in a certain cause therein depending and at issue, wherein La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, has petitioned for a limitation of its liability, as follows:

OSCAR HELMORE HENDERSON, of Halifax, Nova Scotia, occupation, Master Mariner, aged 42 years and upwards, being duly and publicly sworn and examined on the part of the Claimants, doth depose and say as follows:

First: To the First Interrogatory, as follows:

708 State your name, age, residence, and occupation, and, if you shall say that you are a mariner, state what your seafaring experience has been;

he saith:

My name is Oscar Helmore Henderson; age, 42 years; residence, Halifax, Nova Scotia; occupation, Master Mariner. I have been going to sea for twenty-eight years, and been a Master Mariner eighteen years.

Second: To the Second Interrogatory, as follows:

What vessel were you connected with on the 4th of July, 1898, and what position did you hold on such vessel;

he saith: 709

I was Captain of the ship *Cromartyshire*.

Third: To the Third Interrogatory, as follows:

If you shall say that you were master of the British ship *Cromartyshire*, then state how long you had been her master, and give a full description of the ship;

he saith:

I had been master of the *Cromartyshire* three and a half years. She was a full rigged ship of 1,462 tons net register; an iron ship.

Fourth: To the Fourth Interrogatory, as follows:

From half past four to five o'clock in the morning 710
of the 4th of July, 1898, in what part of the sea was the *Cromartyshire*, on what voyage bound, loaded with what, how headed, with what sail set? How fast was she moving through the water;

he saith:

In the North Atlantic; on a voyage bound from Dunkerque to Philadelphia; loaded with chalk; headed west northwest true. All plain sails were set excepting royals, spanker, and main topmast staysail and crossjack. She was moving through the water about four knots.

Fifth: To the Fifth Interrogatory, as follows: 711

What was the condition of the wind and the weather at that time, and how long had such condition prevailed;

he saith:

The wind was from the southwest, moderate weather, and a dense fog. Such conditions had prevailed since about 1 o'clock in the morning.

Sixth: To the Sixth Interrogatory, as follows:

If you shall say that it was foggy, describe the denseness of the fog, and state whether anything

718 Twelfth: To the Twelfth Interrogatory, as follows:

When you first saw *La Bourgogne*, how did she bear from you, and in what direction did she appear to be heading? How long before the collision did you first see her;

he saith:

About a point on our port bow. She appeared to be heading straight for us.

Thirteenth: To the Thirteenth Interrogatory, as follows:

719 At what rate of speed did the *Bourgogne* appear to you to be moving? Be particular about this, and give any reasons that you may have for stating such rate to have been her speed;

he saith:

I saw her only a few seconds before the collision. I judged her to be somewhere between fifteen and twenty knots. My reasons for so judging were from long experience at sea, I am able to judge of the speed of my own vessel or other vessels passing.

Fourteenth: To the Fourteenth Interrogatory, as follows:

720 How did the vessels come together? What part of *La Bourgogne* was struck? What was the result to the *Cromartyshire;*

he saith:

Our stem came in contact with the *La Bourgogne's* side somewhere about the bridge. The result to the *Cromartyshire* was, there were about twenty-five feet of her bow torn away. Everything was gone from forward, and her top hampers above the lower cap were all gone by the board.

Fifteenth: To the Fifteenth Interrogatory, as follows: 721

How long was the *La Bourgogne* visible to you? Why did you lose sight of her? What became of her? What did you hear from her before she sunk;

he saith:

La Bourgogne was only visible for a few seconds. She kept right on her course and disappeared in the fog. Before she sank, I heard several blasts from her whistle and a gun shot. I learned afterwards that she sank, but I did not know it at the time.

Sixteenth: To the Sixteenth Interrogatory, as follows: 722

What was done on board of the *Cromartyshire* after the collision;

he saith:

First we went to work to clear away the wreckage, and jettisoned part of the cargo. We laid there all day.

Seventeenth: To the Seventeenth Interrogatory, as follows:

How long was it before the fog lifted? What did you see and hear then;

he saith: 723

The fog lifted in about an hour. Then I saw two boats with the French flag flying. I signaled them to come alongside. I learned from the crew that manned those boats that the steamer had gone to the bottom, and the passengers, all but those that were in the boats and rafts, had gone down with her.

Eighteenth: To the Eighteenth Interrogatory, as follows:

What did the *Cromartyshire* do after that, and how did she get into port;

724 he saith:

We laid there all day and towed the rafts alongside that had the passengers and part of the crew on them, and then we were picked up by the steamer *Grecian* and towed in to Halifax.

Nineteenth: To the Nineteenth Interrogatory, as follows:

What was the exact spot where the collision occurred? Is that in the usual track of European liners at that time of the year? If not, how far away is it;

he saith:

725 We were 60 miles due south of Sable Island. That is not in the usual track of European liners at that time. It is somewhere about 100 miles north of where the liners usually go at that time of the year.

Twentieth: To the Twentieth Interrogatory, as follows:

Do you know of any other matter or thing of benefit to the plaintiff herein? If so, state the same fully, as though you had been specially interrogated in regard thereto;

he saith:

I know of nothing else of benefit to the plaintiff
726 herein.

First: To the First Cross-Interrogatory, as follows:

What do you know about the usual routes pursued by steamers between Europe and America? Have you ever been master of a steamer, and, if so, what was her name? To and from what ports did she ply;

he saith:

They are laid down on the pilot charts issued by the United States Hydrographic Department. I

am familiar with them by traveling over them. 727
There are foot notes on those charts recommending sailing ships to keep clear of those tracks as much as possible, which I did. I have never been master of a steamer.

Second: To the Second Cross-Interrogatory, as follows:

Who did you have on the lookout at the time of and just before the collision? Was it the same man who was engaged in sounding the fog horn? What was his name;

he saith:

I had a seaman on the lookout by the name of 728
William Hailey. It was the same man who was engaged in sounding the fog horn.

Third: To the Third Cross-Interrogatory, as follows:

After you heard the fog whistle of *La Bourgogne* sufficiently long to fear a collision, what steps did you take by shortening sail, or otherwise, to avoid a collision? Did you place any men on the yards to back them, if necessary? If so, who did you send aloft for that purpose? What were their names;

he saith:

We took no further steps. We were going so 729
slow at that time that if we had taken any further steps, we would not have had the ship under command. I did not place any men on the yards to back them.

Fourth: To the Fourth Cross-Interrogatory, as follows:

What was the total number of your officers and crew? What watch was on deck from the time you heard *La Bourgogne's* fog whistle to the time of collision? How many were they, and what were their names;

730 he saith:

I had twenty-one officers and men all told. The port watch. The port watch consisted of half the crew. I do not remember their names.

Fifth: To the Fifth Cross-Interrogatory, as follows:

Had you seen, before your examination on this commission, a copy of the stenographer's minutes of your testimony in the case of Thomas Law & Co. v. La Compagnie Generale Transatlantique, in the Probate, Divorce and Admiralty Division of the High Court of Justice of England;

731 he saith:

Yes, I had.

Sixth: To the Sixth Cross-Interrogatory, as follows:

Have you had any correspondence with the attorneys for the plaintiff in this case respecting your testimony herein, or have you received instructions from the owners to appear and testify in these cases? If you say you have had such correspondence, annex the whole of the same to your deposition, and if you have been instructed to testify in this case, state what such instructions were, and, if
732 in writing, annex them to this commission;

he saith:

I have had a letter from the attorneys for the plaintiff in this case, but I have not received any instructions from the owners to appear and testify. The only correspondence I have had is the following letter:

"A. GORDON MURRAY, 34 Pine Street, 733
"Attorney & Counsellor at Law. New York.
"JULY 14, 1900.

"Oscar H. Henderson, Esq.,
"Master British Ship *Largo Law*,
"San Francisco, Cal.

"DEAR SIR:

"I am sending to the Clerk of the U. S. District "Court at San Francisco a Commission to take your "testimony regarding the collision with *La Bour-"gogne*, at the instance of Mr. W. C. Perry, of Kan-"sas City, Mo.

"This Commission is identical with the one you "answered at Nagasaki recently, but by reason of 734
"certain legalities that is not available for use in "the present proceeding.

"If you will kindly attend on the District Court "and answer the questions in the Commission, I "will be obliged to you and will gladly pay any ex-"penses you may incur upon being informed of the "amount.

"Yours truly,
"(Signed) A. G. MURRAY."

I have had no instructions to testify in this case.

(The witness delivers letter, to be attached to 735
deposition, marked by Commissioner "Exhibit A.")

Seventh: To the Seventh Cross-Interrogatory, as follows:

Look at the annexed transcript of what appears to be the official shorthand writer's notes of your evidence in the case of Thomas Law & Co. v. La Compagnie Generale Transatlantique, in the Probate, Divorce and Admiralty Division of the High Court of Justice, and state whether or not the same is a true statement of your testimony in that case.

736 Do you still affirm the statements that you made in answer to the questions and cross-questions that were propounded to you upon that trial as appearing in the said shorthand writer's notes? If you say the same is not a correct report of your testimony upon that trial, state in what particulars the same is incorrect;

he saith:

I have read through my testimony and find it to be correct, with the following exception: On page 31, the question "You told us she was getting narrower, getting more ahead, you told us. A. She
737 seemed to be, yes." This question should read "You told us she was getting nearer," not "narrower." I still affirm the statements that I made in answer to the questions and cross-questions that were propounded to me upon that trial, as appears by the annexed shorthand reporter's notes.

(The Commissioner here marked the annexed shorthand reporter's notes referred to "Exhibit B.")

Eighth: To the Eighth Cross-Interrogatory, as follows:

Do you know any other matter or thing of advantage to the defendant on the trial of the above
738 entitled action? If so, please state the same as if you were specially interrogated thereunto;

he saith:

I do not.

O. H. HENDERSON.

Subscribed and sworn to before me this 30th day of July, 1900.

GEO. E. MORSE,
United States Commissioner for the Northern District of California, at San Francisco.

Each page of the deposition separately signed. 739
Geo. E. Morse, Commissioner, and the following endorsement:

At the execution of a commission for the examination of a witness wherein La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne,* has petitioned for a limitation of its liability, this paper was produced and shown to Oscar Helmore Henderson and by him deposed unto at the time of his examination before me.

GEO. E. MORSE,
Commissioner.

A. GORDON MURRAY, 34 Pine Street, 740
Attorney & Counsellor at Law. New York.
JULY 14, 1900.

OSCAR H. HENDERSON, Esq.,
Master British Ship *Largo Law,*
San Francisco, Cal.

DEAR SIR:

I am sending to the Clerk of the U. S. District Court at San Francisco a Commission to take your testimony regarding the collision with *La Bourgogne,* at the instance of Mr. W. C. Perry, of Kansas City, Mo.

This Commission is identical with the one you answered at Nagasaki recently, but by reason of cer- 741
tain legalities that is not available for use in the present proceeding.

If you will kindly attend on the District Court and answer the questions in the Commission, I will be obliged to you and will gladly pay any expense you may incur upon being informed of the amount.

Yours truly,
A. G. MURRAY.

Endorsed—Exhibit A.—Filed July 26, 1900.—Geo. E. Morse, U. S. Commissioner for the Northern District of California at San Francisco.

742 UNITED STATES OF AMERICA,
Northern District of California,
City and County of San Francisco, } ss.:

I, GEORGE E. MORSE, Commissioner and Clerk of the United States District Court for the Northern District of California, duly appointed to take the deposition of Oscar Helmore Henderson, do hereby certify that the said witness was by me duly sworn to testify the truth, the whole truth, and nothing but the truth; that the said deposition was taken at the time and place mentioned, to wit, in my office, Room 63, Appraisers' Building, in the City and County of San Francisco, State of California, and
743 on the 26th day of July, 1900, beginning at the hour of 11 o'clock A. M. thereof; that said answers to said interrogatories and cross-interrogatories were taken in shorthand by Clement Bennett, and afterwards reduced to typewriting, and, when completed, was by me carefully read to the said witness, and, being by him corrected in all the particulars desired by him, was by him subscribed in my presence.

And I do further certify that the exhibits hereunto annexed and marked by me, being letter from A. G. Murray to Oscar H. Henderson, marked "Exhibit A," and the official shorthand reporter's
744 notes of Oscar H. Henderson's evidence taken in the case of Thomas Law & Co. *v.* La Compagnie Generale Transatlantique, marked "Exhibit B," and accompanying the foregoing transcript, are those which were introduced in evidence and referred to in said witness's testimony.

In witness whereof, I have hereunto subscribed my name and affixed my seal of office, at my office, in the City and County of San Francisco, this 30th day of July, A. D. 1900.

GEO. E. MORSE,
Commissioner and Clerk of the United States District Court for the Northern District of California.

U. S. DISTRICT COURT, 745

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 746

SIRS:

Please take notice that the Commission heretofore issued out of this Court and entitled in the within proceedings, upon an order of the Hon. Edward B. Thomas, U. S. J., dated and filed the 14th day of July, 1900, to take the testimony of Oscar Helmore Henderson, lately captain of the British ship *Cromartyshire*, has been duly executed and returned to the Clerk of the U. S. District Court for the Southern District of New York, and this day received and filed in the said Clerk's office.

New York August 7th, 1900. 747

Yours, &c.,

A. GORDON MURRAY,
Proctor for Claimants,
34 Pine Street,
New York City.

To Messrs. JONES & GOVIN,
Proctors for Petitioner,
No. 45 Cedar Street,
New York City.

(Endorsed)—Copy received Aug. 7th, 1900.—Jones & Govin, Prots. for Petr.

748 At a Stated Term of the United States District Court, Southern District of New York, held at the United States Court House and Post Office Building, in the City of New York, on the 21st day of October, 1900.

Present—Hon. ADDISON BROWN, *Judge*.

IN THE MATTER

OF

749 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability, &c.

Ordered, that the commission heretofore issued out of this Court to take the deposition of Oscar Helmore Henderson, a witness on behalf of W. C. Perry and others, duly executed and returned and now on file in this proceeding be opened and placed on file.

750 Dated New York, October 25th, 1900.

ADDISON BROWN.

(Endorsed)—Order.—Filed Oct. 27, 1900.

UNITED STATES DISTRICT COURT, 751

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 752

On the annexed affidavit of Edward K. Jones, verified the 10th day of October, 1900, and upon the affidavit of A. Gordon Murray, verified the 13th day of July, 1900, the order to show cause granted by the Hon. E. B. Thomas on the 13th day of July, 1900, and the further order of the said Judge, dated the 14th day of July, 1900, directing that a commission to take the testimony of Oscar Henderson as a witness in this proceeding, and upon all the papers and proceedings in this cause, it is

Ordered, that A. Gordon Murray, Esq., claiming 753 to be the proctor of and to represent certain persons interested in this proceeding, show cause before this Court at a Stated Term thereof to be held in the United States Court House and Post Office Building in the City of New York, on the 11th day of October, 1900, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why an order should not be made suppressing the deposition of the said Oscar Henderson taken under the above mentioned order of the Hon. E. B. Thomas, dated July 14th, 1900, and why the petitioner in

754 this cause should not have such other and further order or relief in the premises as may be just.

Service of a copy hereof on the 10th day of October shall be deemed sufficient.

Dated New York, October 10th, 1900.

ADDISON BROWN,
U. S. District Judge.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

755

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

756 EDWARD K. JONES, being duly sworn, deposes and says:

That he is the proctor for the above named petitioner, La Compagnie Generale Transatlantique, in this proceeding.

Deponent further deposes and says that whilst this deponent was absent in Europe in the month of July last an application was made, by an order to show cause, to the Hon. E. B. Thomas, United States District Judge for the Eastern District of

New York, sitting as a Judge of this Court, for the 757
issue of a commission to take the testimony of one Oscar Henderson as a witness for certain persons who, without showing any standing in Court, stated that they desired to take the testimony of the said Henderson in this proceeding; that a copy of the said order to show cause and the affidavit of A. Gordon Murray, Esq., verified the 13th day of July, 1900, are on the files of this Court, and deponent refers to the same as if copies thereof were hereunto annexed; that the said order to show cause was served very late in the afternoon of the 13th day of July, 1900, returnable the next morning at half-past ten o'clock in Brooklyn; that in depo-
nent's absence a representative of deponent's office 758
appeared and protested against the granting of the said motion and deponent is informed by his said representative and verily believes that Judge Thomas decided to grant the same subject to the right of the petitioner, or its proctor, to move to suppress the deposition that might be taken thereunder; and deponent also refers to the original order made by Judge Thomas on the said motion as if a copy thereof was hereto annexed.

Deponent further deposes and says that he is informed and believes that a deposition has been taken under the said order and returned to the Clerk of this Court and that a motion to open the 759
same is noticed for Thursday, the 11th day of October inst.

Deponent further deposes and says that he is advised and believes that the said order for a commission to take the testimony of the said Oscar Henderson is absolutely null and void on the face of the papers hereinbefore mentioned.

Deponent further deposes and says that he is informed and believes that the said Henderson will shortly be at Liverpool, or some other port in Eng-

760 land, where his testimony may be regularly taken in case a proper application shall be made to this Court for an order therefor.

Deponent, therefore, asks that an order be made upon the proctor who applied for the said order that he show cause why the said deposition should not be suppressed returnable on the opening of the Court on the said 11th day of October, 1900.

No previous application has been made for the relief herein prayed.

EDWARD K. JONES.

Sworn to before me this 10th day of October, 1900.

761 FREDERICK KOPF,
Notary Public, (56)
[SEAL.] N. Y. Co.

(Endorsed)—Order to Show Cause and Affidavit. —It is agreed that this motion is to be disposed of on the order to show cause why a Commission should not issue and the affidavit on which it was granted the order for the Commission and the interrogatories therein referred to without reference to the statements in the annexed affidavit.—A. Gordon Murray, Proctor for Claimant, 34 Pine St., N. Y., Oct. 16, 1900. —Jones & Govin, Proctors for Petitioner.

762

UNITED STATES DISTRICT COURT, 763

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. October 18, 1900. 764

JONES & GOVIN, Proctors; E. K. JONES, of Counsel for Petitioner.

A. G. MURRAY, Proctor; R. D. BENEDICT, of Counsel for Claimants.

THOMAS, *J.*—A motion was made to the District Court in the above proceeding to limit liability, that a commission issue to take evidence upon interrogatories theretofore settled between the same parties in an action upon a claim merged in the proceedings. The commission has been executed, 765 and a motion is now made to suppress the deposition upon the same papers upon which the application for the commission was made and the order of the Court thereon, and the interrogatories themselves. Hence the Court will take cognizance of no extrinsic fact. These papers do not show objection to the commission as proposed to be taken, nor to the interrogatories proposed. The parties had settled the interrogatories respecting the same claim, and the motion was to adopt the interrogatories as thus settled. If there was any objection

766 to this apparently reasonable procedure, or if the petitioner desired to change, withdraw, or to add to his cross-interrogatories, he should have stated that fact to the Court. As the papers which the Court by the stipulation of counsel is allowed to consult for the purpose of this motion, do not show any objection to the taking of evidence in the form in which it was taken, or any suggestion interposing other or further interrogatories, or modifying those already proposed, the present motion must be denied.

EDWARD B. THOMAS,
U. S. J.

767

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at the Court Room in the Federal Building, in the City of New York, on 25th day of October, 1900.

Present—The Honorable EDWARD B. THOMAS,
Judge.

IN THE MATTER

768

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

Upon the order to show cause why the commission and deposition of Oscar Helmore Henderson

should not be suppressed, dated the 10th day of October, 1900, and the affidavit of A. Gordon Murray, dated the 13th day of July, 1900, and the order to show cause of the same date, based thereon, and the order dated July 14th, 1900, to issue a commission to the Clerk, Deputy Clerk or other officer of the District Court of the United States of America for the Northern District of California, to take the deposition of Oscar Helmore Henderson, late captain of the British ship *Cromartyshire*, upon interrogatories and cross-interrogatories therein specified, and upon such interrogatories and cross-interrogatories and upon the stipulation entered into the 16th day of October, 1900, between the proctors for the petitioner and the proctor for the claimants W. C. Perry, administrator, and others, and after hearing Mr. Edward K. Jones, of counsel, for the motion, and Mr. Robert D. Benedict, of counsel, opposed, and now on motion of A. Gordon Murray, Esq., it is hereby

769

770

Ordered, that the motion to suppress the said deposition be and the same is denied.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Order and Notice of Settlement.—Filed Oct. 25, 1900.

771

772 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
773 BOURGOGNE," for limitation of liability and other relief.

On the annexed affidavit of Edward Stephens, certified the 22d day of October, 1900, it is

Ordered, that Pauline Henny, administratrix, and W. C. Perry, claimants in the above entitled proceeding, or their proctor, show cause before this Court at a Stated Term thereof, to be held in the United States Court House in the City of New York, on the 23d day of October, 1900, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the deposition of Oscar
774 Helmore Henderson, as a witness in behalf of the said claimants should not be suppressed and stricken from the files of the Court.

Service hereof on or before the 22d day of October, 1900, shall be sufficient.

Dated New York, October 22d, 1900.

EDWARD B. THOMAS,

U. S. J.

UNITED STATES DISTRICT COURT, 775

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 776

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

EDWARD STEPHENS, being duly sworn, deposes and says:

I am an attorney at law, reside in the Borough of Manhattan, City of New York, and have my office at No. 45 Cedar Street, in said Borough and City, with Edward K. Jones, Esqre., proctor for the above named petitioner. The above named petition was filed in this Court on or about the 15th day of 777 May, 1900, its object being to limit the liability of the petitioner and to bring all of the claimants against the petitioner into Court and thereby to prevent a multiplicity of suits. A motion was duly issued upon said petition commanding all claimants against the petitioner to file their claims on or before the 21st day of August, 1900, and said monition also contained an injunction order staying all proceedings in suits by said claimants against the petitioner in any and all other Courts

778 and enjoining the plaintiffs therein against proceeding further in their said suits.

On or about Saturday, the 14th day of July, 1900, at ten o'clock in the forenoon thereof, I arrived at said office and found there a certain order to show cause returnable at Chambers in the Federal Building, Brooklyn, N. Y., at 10.30 o'clock of the same day why a commission containing the interrogatories and cross-interrogatories embodied in a certain commission from the Circuit Court of the United States for the Southern District of New York to one Oscar Henderson, executed at Nagasaki, Japan, on the 13th day of April, 1900, before
779 the American Consul at that place, should not issue out of this Court in this proceeding to retake the testimony of the said Henderson at San Francisco, California.

I was informed by Frederick Kopf, Esqre., managing clerk of said office, that said order to show cause had been served thereat very late in the afternoon of the preceding day and after I had left the said office. I immediately hastened to said Federal Building and by reason of the shortness of notice of said motion was compelled to study the papers therein and to prepare my argument thereon while on my way to said building.

780 On my arrival at said Chambers at 10.30 of said forenoon I appeared before the Hon. Edward B. Thomas, United States District Judge for the Eastern District of New York, sitting as a Judge of this Court, and found there R. D. Benedict, Esqre., and A. Gordon Murray, Esqre., who claimed to appear in support of said motion.

I then and there protested against the granting of said motion on the following grounds:

1. That the motion was made returnable in the U. S. District Court for the Eastern District of New York, which had no jurisdiction of this pro-

ceeding, the same having been begun and being 781
then pending in the U. S. District Court for the Southern District of New York.

2. That the persons in whose behalf said motion was made had filed no claims in this proceeding nor appeared therein in any manner, were absolute strangers thereto and had no standing in Court.

3. That the suits in which said persons were plaintiffs had been stayed and that said persons were then under injunction against proceeding further in said suits.

782

4. That the Court had no authority to issue a commission in this proceeding upon interrogatories framed in another cause and pending in another Court, especially where the parties were different and where the questions before the Court were different, and that the petitioner's counsel had refused to consent to admit the deposition taken in the Circuit Court on the ground that he desired to cross-examine the witness again.

5. That in any case petitioner's counsel desired time to prepare further cross-interrogatories which had been rendered necessary by the "fantastic swearing" (as I expressed it) of the witness on 783
previous occasions and that it would be impossible to prepare said interrogatories until the persons named in the motion papers had filed their claims, thus informing us of the nature of their contention and thereby enabling us to intelligently frame said cross-interrogatories.

I also stated that Mr. Jones was then in Europe and that I was not sufficiently familiar with the case to frame said cross-interrogatories in his absence. The learned Judge remarked that of course

784 if the witness should be produced at the hearing on the petition the commission would not be used and we would have an oral cross-examination to which I replied that we desired nothing better but that there was no certainty of his presence at the hearing.

At the close of the argument the learned Judge asked Mr. Benedict if he was sure that he was right in his contention, to which the latter replied that he was; the learned Judge then said to me, "Well, Mr. Benedict thinks he is right in this matter; it will not hurt you if I give him the order, for you can move hereafter to suppress the commission and
785 if he is wrong he will be the sufferer."

After the order was signed Mr. Murray offered to send me a copy of his interrogatories which I declined and stated that I considered the whole proceeding a nullity.

No previous application has been made for the relief herein prayed for upon the grounds herein stated.

EDWARD STEPHENS.

Sworn to before me this 22d day of October, 1900.

FREDERICK KOPP,
Notary Public (56),
786 [SEAL.] N. Y. Co.

(Endorsed)—Order to show cause why deposition should not be suppressed, &c., and affidavit.—Filed Oct. 25, 1900.

UNITED STATES DISTRICT COURT, 787

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 788

On the annexed affidavit of Edward K. Jones, verified the 22d day of October, 1900, it is

Ordered, that Pauline Henny, administratrix, and W. C. Perry, claimants in the above entitled proceeding, or their proctors, show cause before this Court at a Stated Term thereof to be held in the United States Court House, in the City of New York, on the 23d day of October, 1900, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, why the deposition of Oscar Helmore Henderson, as a witness in behalf of the 789 said claimants, should not be suppressed and stricken from the files of the Court.

Service hereof on or before the 22d day of October, 1900, shall be sufficient.

Dated New York, October 22, 1900.

EDWARD B. THOMAS,

U. S. J.

790 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
791 BOURGOGNE," for limitation of liability and other relief.

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

EDWARD K. JONES, being duly sworn, deposes and says:

That he is the proctor and counsel for the above named petitioner; that he is informed and believes that on or about the 13th day of July, 1900, an order was made by the Hon. Edward B. Thomas, Judge of the District Court of the United States
792 for the Eastern District of New York, requiring the petitioner, or its proctors, to show cause at Chambers in the Federal Building, Brooklyn, N. Y., on the morning of July 14th, 1900, at 10.30 A. M., or as soon thereafter as counsel could be heard, why a commission should not issue to take the deposition of one Oscar Helmore Henderson upon interrogatories and cross-interrogatories in a cause theretofore pending in the Circuit Court of the United States for the Southern District of New York, a copy of which said order is hereunto an-

nexed and marked "Exhibit A;" that the said 793
order to show cause was granted upon the affidavit of A. Gordon Murray, Esq., verified the 13th day of July, 1900, a copy of which said affidavit is hereunto annexed and marked "Exhibit B;" that thereupon an order, of which a copy is annexed marked "C," was made by the same Judge directing the issue of the commission as contemplated by the said order to show cause, in which it is recited, among other things, that the same was to be executed "upon interrogatories and cross-interrogatories presented herewith," a copy of which said interrogatories and cross-interrogatories are also hereunto annexed and marked "Exhibit D;" and 794
that subsequently the said commission was issued and has recently been returned to the office of the Clerk of the District Court of the United States for the Southern District of New York.

Deponent is advised and believes that the said proceeding to so take the deposition of the said Oscar Henderson is void on its face and, therefore, moves that the said deposition be suppressed upon the above mentioned papers, which, as deponent is informed and believes, were all the papers submitted to the Court upon the said motion for said commission.

No previous application has been made for the 795
relief herein prayed for upon the ground herein stated.

EDWARD K. JONES.

Sworn to and subscribed before me
this 22d day of October, 1900.

FREDERICK KOPF,
Notary Public (56),
[SEAL.] N. Y. Co.

796 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

Before Hon. ADDISON BROWN, *Judge.*

IN THE MATTER

OF

797 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

NEW YORK, October 25, 1900.

Present—Mr. JONES, for Petitioner.
Mr. MURRAY and Mr. BETTS, for Henuy, as Administratrix *et al.*
Mr. EDWARD BENEDICT, for Deslions *et al.*

798 Upon hearing of the two motions made by Mr. Jones returnable October 23, 1900, the Court directs that the commission previously issued and now returned for the examination of Oscar H. Henderson may be opened.

That Mr. Jones within five days may frame and issue cross-interrogatories upon a new commission to examine the same witness without restriction and the damage claimants may, if they desire, join in any further interrogatories.

That the commission be forwarded for execution to Queenstown as soon as possible after the inter-

rogatories and cross-interrogatories are settled and 799
that the damage claimants produce the witness for examination before the Commissioner who is named for executing it.

That the expense of the commission so far as respects any cross-interrogatories be borne by Mr. Jones. That the expense so far as respects any further interrogatories by the damage claimants, if any such interrogatories are proposed, be borne by them:

Further ordered, that the final disposition of the present motions stand over to be heard after the return of the new commission or such further order as the Court may make in respect to the further 800
hearing of these motions.

ADDISON BROWN.

(Endorsed)—Order for Commission, &c., &c., &c.—
Filed Oct. 26, 1900.

801

802 **Deposition of Adrien La Casse taken de bene esse and offered in evidence as Respondent's Ex. 15.**

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

803 The COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

DEPOSITION of Adrien LaCasse, taken pursuant to the annexed notice, before me, Robert Ferguson, a Notary Public, for the County of Susquehanna, State of Pennsylvania, at my office, in Great Bend, in said County and State, on the first day of June, 1901.

EDWARD K. JONES (FREDERICK KOPF), Proctors, appearing for the Petitioners.

804 BENEDICT & BENEDICT, A. GORDON MURRAY and JUDSON G. WELLS, Proctors, appearing on behalf of the various claimants.

ADRIEN LACASSE, being duly sworn, upon his oath, to testify to the truth, the whole truth, and nothing but the truth, and being examined by Judson G. Wells, on behalf of various claimants, deposes and says, as follows:

NOTE.—(The Notary Public after administering the oath, cautioned Mr. LaCasse, to tell the truth,

the whole truth, and nothing but the truth, and in 805
his answers, to adhere strictly to the truth.)

DIRECT-EXAMINATION by Mr. Wells:

Q. What is your name, occupation and age? A. My name is Adrien LaCasse, my present occupation is bookkeeping, and I am thirty-two and one-half years old.

Q. Where were you born? A. Paris, France.

Q. Where do you now reside? A. At Great Bend, Pa.

Q. Did you follow the sea as a sailor for any length of time during your life? A. I did.

Q. When and where and in what service? A. 806
For three years.

Q. State your service, and what class of vessels you were on while a sailor?

Objected to on the ground that he has not testified that he was a sailor.

Q. Were you a sailor for any time during your life? A. Yes, I was.

Q. For how many years? A. Two years.

Q. What class of vessels were you on during the time? A. One year in the Merchant Navy, on a sailing vessel, and one year on a man of war.

Q. How was the man of war propelled? A. By 807
steam.

Q. Have you been on the ocean any other time by making various trips on steamers? A. I went across the ocean two or three years ago.

Q. Are you familiar with steamships and steamship boats, and rate of speed?

Mr. Kopf objects to question.

Q. Where were you serving as a sailor, and were you a student of navigation at the same time? A. The first trip I made was on a sailing vessel, I was a student of navigation.

808 Q. From your experience as a sailor, can you determine the rate of speed that a steamer travels, if you were on the boat? A. I could.

Mr. Kopf objects to question.

Q. Mr. LaCasse, were you aboard the French Line Steamer, the *La Bourgogne*, on July 4th, 1898? A. Yes, sir.

Q. Where did you take passage on the steamer? A. In New York City.

Q. Where were you bound for? A. To Havre, France.

Q. What class of passengers were you on that
809 steamer? A. Second-class.

Q. Was there any one with you at the time you took passage? A. My wife was with me.

Q. What state room did you occupy? If I should show you a paper, would you be able to say?

Mr. Kopf objects on the ground that the paper referred to is not sufficient evidence.

Q. By looking at that paper can you tell me what berth you occupied on board the *La Bourgogne?* A. We occupied berth No. 237 and No. 239.

Q. What time did the vessel leave the harbor of New York on its trip to Havre, what day and what hour? A. On the 2d of July, 1898, at quarter to 11,
810 in the morning.

Q. What time was the steamer advertised to sail? A. At ten o'clock in the morning.

Q. The steamer left its dock, how long a time after it had been advertised to sail? A. Three-quarters of an hour after.

Q. Were you on the deck of the steamer when it cleared Sandy Hook? A. I was.

Q. Did you see the pilot on board the steamer?

Mr. Kopf objects.

Q. Did you know what time the pilot was dis- 811
charged or left the vessel? A. At 1 P. M.

Q. Have you any reason for fixing that time? A. I have, the reason is that I gave him a letter for relatives in New York.

Mr. Kopf objects.

Q. Is it not a fact, that the pilot left the vessel at 3 o'clock? A. At about one o'clock, not later than 1.30. Yes, sir.

Q. Mr. LaCasse, do you remember what day it was when the *La Bourgogne* came in collision with another vessel and sank? A. Yes, sir.

Q. What day was it? A. The Fourth of July, 812
1898.

Q. About what time of the day? A. Five o'clock in the morning.

Q. (Mr. Kopf.) Are you testifying on your own knowledge? A. I am.

Q. (Mr. Kopf.) And not from what you have heard? A. No, sir; from my own knowledge.

The petitioner's counsel desire that it is to be noted on the record that the witness is referring to a paper in giving this testimony.

Mr. Wells calls attention to the fact that the witness has not referred to any paper, nor has looked at any paper, except when the last preced- 813
ing question was propounded.

Q. The paper that you have just taken out of your pocket, Mr. LaCasse, and just looked at, did you look at it in reference to the preceding question? A. I did not.

Mr. Kopf objects to question.

Q. Mr. LaCasse, where were you at 5 o'clock in the morning? A. I was on deck.

Petitioner's counsel objects.

814 Q. How long had you been on deck? A. Since one o'clock in the morning.

Q. How came you to go on deck at one o'clock in the morning? A. Because my wife woke me up, having heard the siren of the boat.

Q. Did you hear the fog whistle at that time? A. I did.

Q. What did you do then? A. I dressed and went on deck.

Q. And when you went on deck, what was the condition of the atmosphere? A. A very thick fog.

Q. How thick was the fog?

Mr. Kopf objects to question.

815 Q. Had you previous experience with fogs on the ocean? A. Yes, sir.

Q. Where were you at that time? A. In Iceland and the coasts of Sweden and the English Channel.

Q. Were you familiar with the ordinary conditions of weather, and the conditions of a ship or vessel when sailing in a fog? A. Yes, sir.

Q. This fog which you have testified to on July 4th, 1898, when on the *La Bourgogne*, how thick did it hang? A. It was so thick, as standing on the stern of the ship, I could not see the funnels.

Mr. Kopf objects to question.

816 Q. Did you look seaward from the vessel?

Q. (By Mr. Kopf.) What do you mean by looking seaward? A. I was looking at the sea from the vessel.

Q. (By Mr. Wells.) How far could you see from the vessel? A. I could hardly see the water along the boat.

Q. With your experience with fogs on the ocean have you ever discerned between a light fog and thick fog? A. Yes, sir.

Q. With your experience on this subject, could

you answer whether this was a light haze or a thick fog? A. It was a very thick one, the thickest I had ever seen. 817

Mr. Kopf object to question.

Q. Do you know, Mr. LaCasse, how many miles the ship had made from the time it left its dock, or more particularly from Sandy Hook to the point where the collision occurred?

Mr. Kopf objects.

A. 600 miles.

Q. Have you any knowledge of the average rate of speed that the vessel traveled in a day, until it reached the point where the collision occurred? 818
A. Yes, sir, I have.

Mr. Kopf objects to question.

Q. What was the average speed? A. From 16 to 18 knots an hour.

Q. During the time that the vessel left Sandy Hook, did you have clear weather? A. Yes, sir.

Q. When did the vessel first encounter the fog, do you know? A. The first notice that I had of it was when I woke up at one o'clock Monday morning.

Q. When you went on deck, as you have testified, can you testify as to the rate of speed the vessel 819
was then going? A. Yes, sir.

Mr. Kopf objects to question.

Q. With your previous experience as a sailor, did it give you any familiarity with the rate a vessel would go through the water, you were on, so that you could estimate its speed? A. Yes, sir.

Mr. Kopf objects to question.

Q. What rate of speed can you testify to that the *La Bourgogne* was going at when you went on deck

820 at one o'clock in the morning? A. At sixteen knots an hour.

Q. From what basis do you make this statement? A. By previous experience.

Q. How long did you remain on deck? A. I remained on deck from one o'clock in the morning until about five o'clock in the morning.

Q. Was there any slackening of speed during that time? A. Positively not.

Q. If there had been any slackening of speed, were you on that part of the vessel so that you could have noticed it? A. Yes, sir.

Mr. Kopf objects to question.

821

Q. During the time that you were on deck, from one to five, whom did you see? A. I saw the watch officer and three passengers.

Q. Did you see the captain? A. I did not see him at that time.

Q. Did you see the officers of the ship? A. Only the watch officer.

Q. During this time you testify that you were on deck until four or five o'clock, did you return to your cabin at any time during that time? A. Twice.

Mr. Kopf objects to question.

822

Q. How long did you remain in your cabin? A. About three minutes each time.

Q. When you returned to the deck, what did you do? A. I walked around from the stern aft of the funnels.

Q. What was the cause of your spending all this time on deck? A. Because I did not feel safe, seeing that we were going at such a speed in such a fog.

Mr. Kopf objects to question.

Q. Why did you go on the deck at this time? A. 823
Because I did not feel safe, seeing the speed that we were running at in such a fog.

Q. From your experience as a sailor, did you know that the vessel traveling through the water at the speed at which you have testified the *La Bourgogne* was traveling was safe or an unsafe speed? A. I am positive that it was unsafe.

Q. Was that the reason of your going on deck at this time? A. Yes, sir.

Mr. Kopf objects to question.

Q. Did you hear a signal at any time from the watch officer or other officer to the engineer to 824
slacken speed? A. No.

Objection.

Q. Were you not in a position on board that vessel, so that if a signal to the engineer had been given to slacken speed, would you not have heard it? A. Yes, except when I came in the cabin.

Q. Was your cabin so situated that if the signals for slackening speed had been given that you would have heard it?

Objection.

A. No.

Q. If the speed of that steamer had been slack- 825
ened, or reduced between the time you went on deck, at one o'clock until five o'clock, would you have had knowledge of it?

Objection.

A. Yes.

Q. Was the speed slackened at that time? A. No, sir.

Q. Did you observe the momentum of speed of the ship between those hours and up to the time of the collision? A. Yes.

Objection.

826 Q. How did you observe or notice it? A. By the vibrations and propeller and by looking at the water from the side of the ship when the fog would allow me to do so.

Q. When you say looking at the water from the side of the ship when the fog would allow you to do so, do you refer to the slush of the water? A. Yes.

Objection.

Q. From your experience on steamships as a sailor and study of navigation, do you base your knowledge of the rate of speed of the *La Bourgogne?* A. Yes, sir.

827 Objection.

Q. Can you now testify how fast the vessel was going at that time? A. Yes.

Objection.

Q. How fast? A. About sixteen knots an hour.

Q. Had there been any reduction of speed from your observation while going through the fog than when sailing the day preceding, in clear weather? A. No.

Objection.

Q. Where were you at the time when the collision
828 referred to occurred? A. In my cabin.

Q. Where was your cabin located? A. On the port side.

Q. What were you doing? A. Looking out of the port hole.

Objection.

Q. What did you see out the port hole? A. I saw fog and water rushing by just as fast as before.

Objection.

Q. What was the condition of the fog at that particular moment or time? A. It was very thick, and as thick as before. 829

Q. When you say thick you mean dense, impenetrable? A. Yes.

Q. What did you do then? A. I called my wife and I ran up on deck as fast as I could.

Q. What did you do on deck? A. I ran straight on the upper deck, on the starboard side, until I was just aft of the captain's cabin, when I crossed on the port side and found that all of the upper work of the deck for about sixty feet was gone, and the deck was torn out, and at a glance I looked at it and came rushing back to my cabin. 830

Q. What occured then to you? A. Then my wife by that time was about to dress, so I threw a shawl on her and took her on deck, on the starboard side, and I made her sit on a bench.

Q. When you say that the deck was torn, what other condition did you see that the *La Bourgogne* was in? A. She was already listing very much on the port side.

Q. Did you see the captain and officers of the vessel then? A. No, I only saw the watch officer.

Q. Had you seen the captain and officers on deck at that time? A. Afterwards, not then.

Q. You were already dressed when you went up there, and had been dressed since one o'clock? A. Yes. 831

Q. The moment of the collision or shock, what did you do? A. I ran up on deck.

Q. How many people were on deck when you first went up? A. Not one.

Q. What was the condition of the *La Bourgogne* when you first went on deck? A. When I went up on deck it was so I could see the watch officer, but I could not see any one else, as the fog was so thick and dense.

832 Q. Was there an officer on the bridge? A. Yes, sir.

Q. What officer was there? A. I could not tell.

Q. Did you hear any orders given to the crew? A. I did not.

Q. Were you in a position while on deck that if orders had been given you would have heard them? A. Yes.

Q. Did you hear any orders given? A. No, sir.

Q. Did you return to your cabin? A. Yes.

Q. What did you do then? A. I went downstairs and helped my wife to dress, and we went up on deck.

833 Q. How long a time between your going on deck and going to your cabin had elapsed? A. I was not in my cabin for five minutes at the most.

Q. Did you have any property or money in your cabin, and if so, did you take it with you? A. No.

Q. Why? A. Because I did not dare do anything but reach the deck.

Q. When you went on deck with your wife, to what part of the deck did you go? A. The starboard side.

Q. Whom did you see then? A. In the first place I saw some passengers.

Q. How many? A. When I came back on deck they were coming all the time.

834 Q. Did you see the captain of the vessel? A. Not then.

Q. What time did you see the captain and officers after you went on deck with your wife? A. I did not see them before fifteen minutes.

Q. Did you hear of any orders being given? A. Not before.

Q. Now, Mr. La Casse, what was the condition of the boat, during this time that you testify you went up on deck, from one o'clock until the col-

lision, in relation to the awnings? A. The awnings 835
were on the upper deck, just as usual, all set out.

Q. How far did these awnings cover? A. They covered from the centre of the ship as far as the railing.

Q. Mr. La Casse, from your experience as a sailor, is it customary on board an ocean steamship or other ship to keep up the awnings during the night, or during a fog, the same as they would be kept during dry clear weather? A. It is against the rules in a fog.

Objection.

Q. Now, is it a safe and careful discipline to 836
leave awnings up during the night, and foggy weather, the same as they are kept during the day? A. No.

Q. Were the awnings on the *La Bourgogne*, between the hours of one o'clock and up to the collision, in the same condition as they were during the day preceding? A. Yes.

Objection.

Q. Were the awnings strung on the boat so that they came in contact with the life boats and life rafts? A. Yes.

Objection. 837

Q. Will you testify how the awnings were strung or hung? A. They were hung on one side from the upper deck on the other side clear to the railing of the ship.

Q. Now, Mr. La Casse, after you went on deck with your wife, as previously testified, can you give a statement of what occurred from the time you noticed the vessel listing in the port? A. Since I was on deck with my wife at that time, the boat listed more and more on the upper side until it was

279

838 impossible to stand on the deck. Some rockets were fired, and the cabin passengers all gathered on the upper deck, starboard side, while the third-class passengers rushed to the life boats.

Q. Did you examine the life boats, Mr. La Casse? A. Yes.

Q. What were the condition of the life boats, relating to the awnings or covers? A. The ropes holding the awnings had to be cut to get at the life boats.

Q. Were all the life boats that you seen covered with these awnings? A. Not all of them.

Q. How many of them were?

839 Q. (The witness explains to petitioner's counsel inquiry as to how the awnings were strung, in respect to the life boats.)

Q. Mr. La Casse, the life boats resting on deck and the awnings which you refer to, are those which were strung from the centre of the deck to the railing? A. Not a life boat awning, there are other covers or awnings for them.

Q. What was done in relation to the awnings when they attempted to launch the life boats? A. The ropes holding them had to be cut.

Q. How long a time after the collision was the first life boat lowered? A. As soon as I got on deck

840 with my wife, I saw one of the life boats being lowered.

Q. Who lowered that life boat? A. Sailors of the *Bourgogne* crew.

Q. What was done with the awnings at the time of lowering the life boats? A. The ropes were cut and left hanging on one side.

Q. Was there any interference, from your observation, with these awnings at the launching of the life boats? A. Yes.

Q. In what way did you observe or see the interference with these awnings in the launching of the

life boats? A. Because the loss of time in the cut- 841
ting of the ropes, and in getting knives so that they could cut the ropes.

Q. Were these ropes iron ropes? A. They were all cord.

Q. Who went in the first life boat that was lowered? A. Some sailors of the *La Bourgogne* crew.

Q. Did any passengers attempt to get in this life boat? A. Yes.

Q. What occurred then? A. When I came on deck the boat was lowered, and put off the ship; there were two sailors in the boat, while the other two sailors were lowering the boat from its davits. As soon as the boat go to the water, the sailors slid 842
down into the boat; I, with other passengers, called them back, but they went off, and they kept out of the way of the ship.

Q. What was the condition of the cords and other fastenings of the life boats on board the ship, what you know from your own knowledge and from your personal examination? A. The ropes were all stiff, and everything was rusty.

Q. From your own personal observation of the *La Bourgogne* and from your experience as a sailor, were the life boats of the *La Bourgogne* in a condition to be launched? A. No.

Objection. 843

Q. What were the condition of the ropes and fastenings holding the life boats at the time? A. From my own observation, I am positive that the ropes were stiff, and all joints in the pulleys were rusty, and the paint was not cracked at the joints.

Q. From your own observation, and the condition of the boats, and during the time that the steamer left her dock in New York harbor, up to the time of the collision, had the boats been used

844 or lowered or had there been any drill by the crew? A. No.

Objection.

Q. From your observation and experience, how long a time previous can you tell since those boats had been lowered? A. More than a month.

Objection.

Q. Was there any orders given by the captain or other officers to the crew, following the collision, directing the launching of the life boats or life rafts? A. No.

845 Q. If there had been such orders given, were you in close proximity to the captain and officers to have heard such orders? A. Yes.

Q. Were there any directions or orders given by the captain or officers to the passengers, assigning or directing them to go in such boats, or life rafts, at that time? A. No.

Q. Had anybody taken possession of the life boats or life rafts following the collision, at that particular time? A. Third-class passengers.

Q. What did the crew do? A. They did the same as the third-class passengers; they looked for themselves.

846 Q. From your observation was there any effort made by the officers or crew of the *La Bourgogne* to save or rescue any of the passengers on board the ship at the time of the collision, or following the collision, or when the vessel sank? A. Nothing, but the firing of rockets.

Q. Was there any attempt from your observation of the officers or crew assigning or placing any of the passengers in the life boats or life rafts, at any time before or after the ship sank? A. Yes, I know of one.

Q. Who was that? A. The second captain.

Q. What did he do? A. It was about fifteen 847
minutes before the ship went down, the second captain was with some man, trying to push off the boat on the starboard side, but were unable to do so, on account of the list of the ship. I mean to say that that was the only instance that I observed any officer or member of the crew trying to do something, but for themselves.

Q. When the collision occurred, had there been any slackening of speed?

Objected to on the ground that the witness has not testified that there was a collision.

Q. Mr. La Casse, when you looked out of your 848
port hole, at the time you were in your cabin, for what purpose, if any, did you look out; what occurred at that time that would have occasioned your looking out? A. The condition of the fog at the time; as I was there there came a shock, which made the old boat tremble, and threw me backwards; as I was falling backwards my eyes were still resting on the port hole, and I just took notice of a black object which just passed before my eyes.

Q. Now, from your own knowledge and observation, did you know what occurred at that time? A. Yes.

Q. The shock which you testify you felt was oc- 849
casioned by what? A. By a collision with some ship.

Objection.

Q. When you felt the shock and you ascended to the deck, did you talk with any one? A. Not when I came on deck.

Objection.

Q. From what you had seen when you came on deck, did you know that there had been a collision,

850 or that the vessel had been torn asunder by some object? A. Yes.

Objection.

Q. How long after the collision did the vessel sink? A. I could not give you the time to a minute; to the best of my knowledge about one-half of an hour.

Q. How were you and your wife saved? A. By myself, on a raft.

Q. Were you thrown into the water? A. Yes, sir.

Q. Did you swim to the raft? A. Yes, sir.

851 Q. What occurred at that time? A. The ship gave a list on the port side more and more, until everything on the port side was washed away, and the railing was in the water. I first tried to cut loose a life boat, and stood on the starboard side with my wife, and the boat was tied to the davits, and some passengers were with us, and I was at one end of the boat trying to cut the ropes of the pulley holding the boat on the davits; I was unable to cut top of the second cabin, to slide into the water, and we both fell into the water. I succeeded in swimming, as we had life preservers on, both of us, and I succeeded in reaching the raft with my wife.

852 Q. Who was on the raft at that time? A. There was some people.

Q. Were they sailors or passengers? A. Sailors.

Q. Belonging to the ship's crew? A. Yes.

Q. Did they aid you in getting on the raft? A. No.

Q. Did they render you any assistance? A. No.

Q. What was done by the sailors in aiding other people who were in the water, trying to reach the raft? A. The raft was so loaded that it was under

water, so they pushed off any one trying to get thereon. 853

Q. Who prevented them from getting on the raft? A. The *La Bourgogne's* crew.

Q. Mr. La Casse, you testify that you were unable to cut the cords holding the boats at the davits; what were the condition of the cords and rope holding the life boat at that time? A. They were stiff.

Objection.

Q. Did you unhook or untie them? A. No.

Q. Did you try? A. Yes.

Q. What did you do toward loosening the life boat at that time when you testify you tried to cut it? A. I first tried to raise the boat from the deck where it was resting on the davits to push it out. The davits could not be turned, they did not work easily, and we did not have strength enough to turn them. 854

Q. Were they rusty? A. Yes.

Q. From your observation had they been used for some time? A. No.

Objection.

Q. If you had found the davits in the ordinary working order, could you have pushed the boat out and lowered the same? A. Not at that time.

Q. Ordinarily, on board the steamships or other boats, are the davits holding the life boats ordinarily kept in such condition, that two men could launch it, men with ordinary strength? A. Not two men, but four men could do it easily, if the davits were properly kept. 855

Objection.

Q. Were there more than four men trying to push it off at this time? A. Yes.

Q. When the ship sank, where were you? A. On the life raft.

856 Q. How long a time after you were on that raft were you rescued and by what ship? A. We were rescued about eight hours after by the ship *Cromartyshire.*

Q. When you were on this raft, this life raft, with the sailors and crew of the *La Bourgogne*, how was the life raft propelled? A. By stick and pieces of wood.

Q. Were there any oars? A. Yes.

Q. When were the oars first used? A. Some time after.

Q. Who discovered the oars? A. I did.

Q. Where did you find the oars? A. Under the
857 planks of the raft.

Q. Did any of the crew of the raft have knowledge where the oars were stored so far as you know? A. No.

Q. Do I understand you to testify that you discovered the oars hidden under the planks of the raft? A. Yes.

Q. Did you know the position of the wreck at the time of the collision or immediately thereafter? A. We were sixty miles off Sable Island.

Q. How far were you at the time you were rescued from the sinking of the *La Bourgogne?* A. Two miles off.

858 Q. You testify that you were on the life raft for five or six hours? A. Eight hours.

Q. How long after the *La Bourgogne* sank did the fog clear? A. It was clear such as you could see around a short time after we were on the raft.

Q. Who rescued you from the life raft? A. One of the *La Bourgogne* boats, sent from the *Cromartyshire.*

Q. Who was the crew that manned the boat? A. I think some of the *Bourgogne* crew.

Q. Where did you see the English ship *Cromartyshire* when you were on the life raft? A. Not until two hours after the collision.

Q. When the fog cleared, how far was the *Cromartyshire* from the life raft? A. Two miles. 859

Q. What did you observe on the stern of the *Cromartyshire*, if anything, when you approached her? A. We saw a boat and a raft tied to the stern.

Q. Was the boat and raft in use? A. No.

Q. Where were you landed on shore following your rescue? A. At Halifax, Nova Scotia.

Q. What did you do then? A. I went to the French Consul and returned to New York.

Q. When you returned to New York did you make a statement of the incidents that occurred from the time you left New York harbor until the 860
time of your landing at Halifax? A. I made a statement to Judge Dillon.

Q. When was the statement made? A. It was made on or about July 11, 1898.

Q. Will you look at this statement (memorandum shown to witness)? A. This is the statement I made.

Q. You identify this as a verbatim statement made by you at that time? A. Yes.

Memorandum of statement marked Claimant's Exhibit 1 marked for identification.

Q. Did you ever travel on the ships of the Compagnie Generale Transatlantique? A. Yes. 861

Q. What boats were you on? A. *La Gascogne*.

Q. Was that before or after the accident? A. After.

Objection.

Q. Did you observe or note the speed that the boat traveled at? A. Yes.

Q. How fast? A. About sixteen or eighteen knots.

Q. Was it during clear weather? A. Yes.

862 Q. On that trip did you say that there was a fog encountered? A. Yes.

Q. Was the speed slackened while going through the fog? A. Yes.

Q. At what rate then did the boat travel? A. About 10 knots.

Q. Can you give the date when you travelled on the *La Gascogne?* A. We left New York about the last of August and I came back on the same steamer, *La Gascogne*, also at the end of September, 1898.

Q. Did you knew the name of the Captain of the *La Gascogne?* A. Yes.

Q. What was his name? A. Captain Baudelon.

863 Q. Do you know what part of the ocean the collision occurred in? A. 600 miles from New York, 60 miles or so south of Sable Island.

Q. Is there any other statement relative to the collision that came under your observation? A. Yes.

Q. State what it is? A. About the life preservers.

Q. Where were the life preservers? A. In the cabin.

Q. Did any of the crew or officers assist the passengers in putting on life preservers? A. No.

CROSS-EXAMINATION OF WITNESS, MR. LACASSE, BY
864 MR. KOPF:

Q. When you first went up on deck, as you say, about one o'clock in the morning, what did you do? A. I stood on deck looking around.

Q. Did you observe the direction of the wind? A. No, not specially.

Q. Did you observe the direction of the wind at any time when you were on deck, from one o'clock up to the time when you felt the shock? A. No, sir.

Q. Did you observe the direction of the wind

when you were in your cabin looking out of the porthole? A. No, sir. 865

Q. Now you have testified that the collision took place about 60 miles south of Sable Island; how do you fix that distance? A. I fix it from the estimate of the Captain of the English ship that went into collision with the *La Bourgogne*.

Q. Then when you stated that the collision took place 60 miles off Sable Island, you did not have positive knowledge concerning it? A. Only what I heard, but I had personal knowledge when I was aboard the *Cromartyshire*. Two hours after we were on board, we signalled and were taken in tow by the *Grecian*, which runs to Halifax, and my 866 knowledge is that those ships run near Halifax, their course brings them north of Sable Island.

Q. How did you obtain that knowledge? A. By my study of navigation and familiarity with the routes of steamship companies.

Q. In what books were these routes pointed out? A. Not in books, on maps or charts.

Q. What maps? Maps of the Atlantic Ocean.

Q. Those maps or charts did not show the name of the companies who took those routes? A. The line of steamers plying between Havre and New York.

Q. I asked you about the steamers going to Halifax? A. They were the ships or routes of steamers 867 going from London to Halifax.

Q. How did you know that the *Grecian* was going to Halifax? A. My opinion was that it was an Allan State Liner.

Q. Was that your opinion at the time that you fixed the distance of Sable Island at which the collision took place at 60 miles? A. It was not less than 60 miles, in other words it was less than one hundred miles, and I have struck the average at about 60 miles.

868 Q. Now at the time you met the *Cromartyshire* you had been drifting eight hours, you mean to say that you drifted eight hours over the place which you fixed in your mind as the place where the collision took place? A. No, I cannot answer that question otherwise than no, the way you put it.

Q. How did you know the *Grecian* was in her proper course, the course you say is indicated on these charts, steamers running between London and Halifax? A. I know it because it is the sailing route.

Q. You did not have a compass, did you? A. No.

Q. You did not know what latitude or longitude
869 you were in, did you? A. No.

Q. You could not see the land? A. No.

Q. You did not know whether the *Grecian* was in her course or not? A. I believe that the *Grecian* was in her course, but I am positive that we were further north than the sailing route of the French line.

Mr. Kopf moves to strike it out. I ask the question to be repeated.

A. I have no answer to give other than what I gave before.

Q. What was the name of the vessel that you stated you were employed on in the merchant navy?
870 A. The *Dunkerque,* of the Bordes Line.

Q. Was that the only vessel you were on while employed in the merchant navy? A. Yes.

Q. You say that you were in that service for a year? A. Yes.

Q. What year was that? A. 1898.

Q. What did you do on that ship? A. I was pilotin.

Q. How did you come to leave that service? A. To go into the French Navy.

Q. On what year was that? A. 1889, I could not swear as to the date, it was so far away.

Q. Was that time of the collision, to which you testified, so far away? A. No, it was nearer, the incidents were thoroughly impressed upon my memory. 871

Q. What were the names of the vessels in the French Navy that you were on? A. *Chateau Ranauch.*

Q. Was that the only vessel? A. Yes, sir.

Q. How long were you on that vessel? A. Ten months.

Q. In what service were you on that steamer? A. A sailor.

Q. What grade? A. Ordinary sailor.

Q. Since you left this French man-of-war you have not done any service on vessels have you? A. No, sir. 872

Q. I understand you to say that the vessel which you were on in the merchant navy ran between Dunkerque and Bordeaux? A. No, the company's headquarters were in Bordeaux, the vessel sailed from Havre.

Q. To what point? A. From Havre to Cardiff, from Cardiff to Rio Janeiro, from there to Cape Horn, thence to Valparaiso, thence to Valpa, around Cape Horn to Iquique, C. A., from thence back to France.

Q. What ports, if any, did this man-of-war run to? A. For six months we were stationed in Iceland, from there to Sweden and Denmark, and thence to the English Channel, thence to Cherbourg, our home station. 873

Q. Did any of these vessels ever take you in the region of this collision? A. No, but in the same latitude.

Q. Did you observe the direction of the wind any time before the collision? A. No, sir.

Q. You testify here that you had made efforts to launch the life boat? A. Yes.

874 Q. Now at that particular time the *La Bourgogne* had listed considerably? A. Yes.

Q. And this life boat that you tried to launch was on the starboard side? A. Yes.

Q. Now, do you know, and you have testified here very fully as to your observation on steamers, and other fact that usually take place on ocean steamers, that the French Line of steamers have a drill, a life boat drill and a fire boat drill every Thursday? A. I have heard of it.

Q. You have never been present when they had one of these drills, have you? A. No.

Q. What effect do you suppose that the night salt
875 air, or damp air such as you find in dense fogs, such as you have described, has upon ropes? A. It softens them.

Q. Did you ever see a pulley line after a wet night? A. I have never paid much attention to it.

Q. Did you ever notice that they softened up? A. I differ with you.

Q. Don't you suppose that damp air has some effect upon metal? A. I am not a chemist.

Q. Will it not rust? A. Yes, it will rust.

Q. Did you, when you came on board any time, between one and five, look above? A. I looked around, I could not tell if I looked above.

Q. You did not notice whether there was any
876 moon or stars? A. I did not see any.

Q. If you have had the experience you say you have had, don't you know that if you want to fix the density of a fog, you want to look above? A. No, I did not look above.

Q. Now, I noticed that before you fixed the estimate of the speed of the *La Bourgogne*, between one and five, that you calculated on paper, did you not? A. I made calculation on paper with pencil.

Q. How do you know that the speed of the *La Bourgogne* from the time she left Sandy Hook to the

time she collided was from 16 to 18 knots? A. From personal knowledge, based upon what I know. 877

Q. What do you know? A. I know that the speed was such that by looking at the water along the ship, when I had a chance to do so, and by the vibrations of the machinery.

Q. In making that calculation, did you take into account the double effect of the wind and the tide? A. Yes.

Q. Don't you also base your so-called knowledge on the fact that it is generally known that the speed of most of the French Line steamers is between 16 and 18 knots? A. I know that to be a fact, but my calculation is not based on that knowledge, but the rate of speed is gauged by my own estimation. 878

Q. Do you know how the orders were transferred from the engine room to the bridge? A. They have a gong and a tube.

Q. That is the only way? A. I do not know anything about steamers of the French Line.

Q. From where you stood on the upper deck of the *La Bourgogne*, between one and five, that you could have heard that gong sound down in the engine room? A. Yes.

Q. How far do you suppose the upper deck is from the floor of the engine room? A. I have no idea.

Q. From your various observations during your trip on different vessels, you cannot make an estimate? A. I will say only what I am sure of. 879

Q. Do you mean to say that during the time between the collision and the sinking of the *La Bourgogne*, you did not see the captain on the bridge? A. I saw him at the last moment.

Q. Did you not hear the captain say in French to the first-class passengers, "Don't be alarmed, I will save you all." A. I did not hear him.

Q. Do you mean to say that you did not make a

880 statement to any one else, but to Judge Dillon? A. I made a statement through the agent of the Compagnie Transatlantique, at New York City.

Q. Did you make a statement to the French Consul at Halifax? A. No.

Q. Or to the French Consul at New York? A. No.

Q. Tell me how all these statements appeared in the newspapers at that time? A. I never made any statement to any newspaper.

Q. Were there among the third class passengers a number of sailors who were not in the employ of the French Line? A. I don't know.

881 Q. How do you know that these passengers on these life boats were among the third class? A. I knew very well the faces of the first and second class passengers, and that is why I knew they were the third class passengers.

Q. There was nothing occurred, was there, that directed your attention to anything going on outside, before the shock of collision? A. No, sir.

Mr. Kopf states:

"Counsel for Claimants refuses to allow the Petitioners' Counsel to examine statement identified by this witness. "The Claimant's Counsel asks

882 that it be noted, that the Petitioner's Counsel has been examining the witness from statement contained in said petition, marked Exhibit 1, has made no objection and withdraws any objection that Petitioner's Counsel has assumed, and makes no objection to the examination of witness, from said Exhibit, and now states for record that Petitioner's Counsel, having examined witness, from said state- no objection and withdraws any objection that Pe- to continue.

Mr. Kopf: Under the restrictions imposed I will not use the Exhibit.

Mr. Wells: I herewith tender the use of the same, 883
for your future cross-examination, unqualifiedly.

Mr. Kopf: Under those circumstances, I will continue to use it.

Q. Did you have any talk with the Captain of the *Cromartyshire?* A. Nothing except a very few words.

Cross-examination closed.

REDIRECT-EXAMINATION BY MR. WELLS:

Q. You have testified in your cross-examination that when you came on deck, you did not look above you, what do you mean by that? A. I did not look 884
specially above, just around me.

Q. Did not that include looking any way, and all ways and directions? A. Yes.

Q. The stars and planets in the sky were not visible? A. I did not see them once during the night.

Q. Is it not a fact that the fog was so dense and thick, that you could not see them? A. It is a fact.

Q. The Counsel has asked you the question whether there was a fire or boat drill on the French steamers; during your travels have you ever seen such a drill? A. No, sir.

Q. You spent most of your time on deck, and if such a drill had taken place, would you not have 885
seen it? A. Yes.

Q. The Counsel has asked you as to the effect of the weather on the ropes, whether damp weather would not soften them, are not the ropes ordinarily used on ships attached to the life boats and davits generally painted so as to avoid contraction? A. No.

Q. If the ropes were painted, would it not prevent contraction. A. I think it would.

Q. You have made a statement to the Company's agent in New York of the incidents of the trip and

886 the collision, is it a similar statement to that dated July 11th, marked Exhibit 1? A. Yes, only it is in French.

Q. To whom did you make that statement? A. To Mr. Bocande, the steamship agent.

Q. This statement that is marked Exhibit 1, and which you have identified, and which has been used by the Petitioner's Counsel, in your cross-examination, is a truthful and correct statement of the incidents of the trip and collision, on your return to New York, following the disaster? A. Yes.

Claimant's Counsel offers the statement in evidence and "requests that it be marked Claimant's
887 "Exhibit, No. 1. Statement received, marked Exhibit No. 1."

ADRIEN LA CASSE.

Sworn and subscribed to before me this 1st day of June, 1901.

ROBERT FERGUSON,
Notary Public,
Susq. Co., Pa.

UNITED STATES OF AMERICA, Southern District of New York, } ss.:

I, ROBERT FERGUSON, a Public Notary, in and for the County of Susquehanna, in the State of Penn-
888 sylvania, duly authorized, under and by virtue of the acts of Congress of the United States and the revised statutes of the United States to take depositions, affidavits, and bail in Civil Causes depending in the Courts of the United States, do hereby certify that the reason for taking the foregoing deposition is and the fact is, that the witness, Adrien LaCasse, is material and necessary in the cause of the caption of the said deposition named, and that he resides more than one hundred miles from the place of trial.

I further certify that a notification of the time 889
and place of taking the said deposition was served on the Proctors for the Petitioner, the copy of the said is hereto attached, to be present at the taking of the depositions and to put interrogatories, if he or they might think fit. Edward K. Jones (Frederick Kopf) appearing for the Petitioners, and Benedict & Benedict, A. Gordon Murray and Judson G. Wells appearing for various claimants, and on the first day of June, in the year of our Lord one thousand nine hundred and one, I was attended by Frederick for the Petitioner, and Judson G. Wells for the various claimants, and by the witness, who was of sound mind, and of lawful age, 890
and the witness Adrien LaCasse, by me first carefully examined and cautioned, and sworn to testify the truth, the whole truth, and nothing but the truth, and the deposition was by Jessie Wilmot, a stenographer (who has been duly sworn to take said testimony in stenographic notes and truthfully transcribe *verbatim* the said notes, which was done in the presence of the witness and under my direction, and from his statements and after carefully reading the same to the witness, before and after he subscribed the same in my presence. I have retained said deposition in my possession for the purpose of transmitting the same to the clerk of this 891
Court, at the post-office building in the City of New York, for the Court, for which the same was taken.

And I do further certify that I am not Counsel nor Attorney for either of the parties in said deposition and caption named, nor in any way interested in the event of the cause named in the said caption.

In testimony whereof, I have hereunto set my hand and seal this first day of June, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States the one hundred and twenty-fifth.

[SEAL.] ROBERT FERGUSON,
Notary Public.

892 **Claimants' Exhibit I, offered in evidence by Claimants.—Exhibit I. of claimants, Robert Ferguson. Ex. No. 1 marked for identification. Robert Ferguson, Notary Public.**

NEW YORK, July 11th, 1898.

I, ADRIEN LACASSE, thirty years old, took passage on board S. S. *La Bourgogne*, July 2d, 1898, with my wife, Victoire Lacasse, going abroad to spend the summer months with my parents whom I had not seen for seven years. My cabin was an outside
893 cabin (berths No. 237 and 239), being located on the starboard side abaft the machinery. We had fine and clear weather Saturday and Sunday and every one retired Sunday night in the best of spirits. We retired, my wife and I, at 10 P. M., my wife having the lower berth in the cabin. At 1 A. M. on Monday morning, July 4th, 1898, I was awakened by my wife, telling me that she heard the siren of our ship. (I may say that I served in the French Navy ten years ago, and I believe that the general notions of navigation I had helped me in a great part to save myself and wife.) As soon as I awoke I dressed myself and went on the deck where I saw
894 that there was a very thick fog. I remained on deck until 4.30 A. M. The weather then having cleared up a little, I went to my cabin and threw myself in bed without taking off my clothes. I awoke again soon and left my berth to go to look out through the porthole. I heard then the siren which had been blowing since 1 A. M. every half minute. I had hardly looked out of the porthole when a terrible crash occurred which threw me backwards and at the same time I saw something passing before my eyes like a flash. My wife screamed immediately. I told her to dress herself

in a hurry and to wait for me in the cabin. Then 895
I rushed up on the promenade deck, meeting nobody on the way. I noticed then that the steamer was giving a certain list on the starboard side. I first went on the port side where I did not see anything, but going to the starboard side I saw the whole side of the ship forward of the machinery was driven in the length of sixty feet and three lifeboats gone. I rushed back to my cabin, meeting two men on going down the stairs. Before getting to my cabin, I pushed in the door of the next cabin to mine, where four gentlemen had their berths, and told them to hurry on deck, as we were sinking. My knowledge as a sailor told me from the very 896
first that the ship was doomed. I found my wife half dressed and crying. I threw a vest on her shoulders and took her upon deck, where I made her sit on one of the benches on the port side.

By that time it was five minutes since the collision had taken place. I saw then the Captain on the forecastle and heard him giving orders, without being able to hear what they were. By that time the deck was pretty well filled with people, most of the first and second cabin. I saw a lady whose acquaintance we had made on board, brought her near my wife and told them to wait for me, as I would get life preservers. I rushed to the cabin
again finding the stairs crowded with people, took 897
three life preservers that were hanged in the cabin, and a bottle of cognac on the sofa. I had the intention of taking my money which was in a valise locked under my wife's berth, but I noticed that the list of the steamship was increasing, and ran up to the deck. When I got there (port side) amidships, it was crowded with passengers of every class. It was then 10 minutes after the collision. There was no screaming, no disorder, only anxious and pale faces. I put one of the life preservers on my

904 of the ship was so great as to put it afloat, they cut the ropes and sailed away, but not without its being filled with a crowd of men who jumped on board. They were about 60 altogether.

A third boat from starboard was filled with women, but when the ship went down the funnel broke her to pieces.

A fourth boat was lowered also from starboard filled with women and men, but being overloaded sank as soon as she touched the water.

Most of the cabin passengers stood near the captain, thinking probably that with him were their best chances. No woman of the steerage was seen
905 on deck, and I suppose that they were either drowned as soon as the water rushed into their quarters or left by their husbands or companions.

When we fell in the water my watch stopped, as afterwards I found it at 5.35 A. M. Once in the water I saw the raft on which we were standing on deck floating at a distance of about four yards. I took hold of my wife, made a few strokes, and got near the raft. Then I let my wife go and crawled on the raft. Then I took hold of her and brought her up on board. By that time there were only two men on the raft, but all at once a crowd rushed for it, and it was filled with 20 people, which brought
906 it one foot under the surface. As soon as I had my wife on the raft I looked around and saw that the ship after she had gone down up to the stern righted up, then the bow rose above the water, and she went down stern first. For one minute nothing was visible at the place where the steamer had disappeared when suddenly there came at the same place a rush of bodies most of them drowned already. At the same time a whirlpool was forming and the bodies began to turn with rapidity until they would disappear in the center.

Those who had the strength or who were good swimmers, thirty in all may be, and all men, began

to swim for the rafts. Then occurred the most ter- 907
rible scenes of the tragedy. These poor creatures would get near a raft only to be pushed away, as every raft was so overloaded that they were all on the point of submerging. I saw these people begging for assistance being turned away and disappear in the ocean. We were at one end of the raft when one of the passengers that I knew, Mr. Achard (the poor man had lost wife and two children) came swimming exhausted near our raft. They cried to me to push him away, but I could not help to have pity and I let him come on board. Five minutes after, everything was ended and the fog cleared away and the sun was shining on the place 908
where a few minutes before so many poor creatures were full of life and hope. There were floating three rafts each one overloaded, and one boat turned upside down with more than 20 people (all men) on it.

For two hours we were tossed about without seeing anything and this was the time when I realized most our terrible situation. I was assured that no ship would sight us, and I knew very well that exhausted as we were and soaked all through we should never be able to pass the night on the raft; we succeeded to catch two oars floating and used them to keep us face to the heavy swell. After these two hours one of us cried that he saw a sail in the 909
distance. I could not believe it at first, but it was true. We all then felt a new courage and began to row in that direction. At the same time we sighted a raft empty floating at a distance from ours. After a hard struggle we succeeded in getting hold of it and ten of our number went on board that raft, then we took it in tow and made for the ship. After two hours we saw that there were already two boats from *La Bourgogne* tied at the stern of the ship and one hour later they sent one to our rescue.

910 This was the Captain's boat, the one that first left *La Bourgogne*. They took in tow one of the rafts ahead of us, then came for us. When they towed us, the line broke three times and every time it was a new anxiety. Eight hours after the *Bourgogne* sank we were alongside the *Cromartyshire*. As we had had to stay kneeling on the raft for these eight hours, we were so exhausted and weak that most of us could not stand on our feet. They put a rope around my wife and brought her on deck. For myself I climbed up the ladder and would not have been able to get over the railing of the ship if I had not been helped along. One more raft was then
911 towed to the ship and finally a boat the one that had been turned upside down, and that they had succeeded to float after three efforts. We were saved, and at 4 o'clock sighted the *Grecian*, which came to our assistance and towed us to Halifax. All the survivors were sent aboard the *Grecian* except my wife and myself, as my wife was too exhausted to stand the change.

I am positive of the authenticity of all the facts mentioned above, as during the disaster I did not lose my head and I kept looking at every incident.

My previous experience as a sailor allows me to make the following remarks:

912 1st. When I first went on deck after the collision, and I saw the extent of damages, I realized at a glance that the ship would sink. Having made same remark to the authorities in New York, I was told that the Captain of *La Bourgogne* was under the impression that the damages were only slight and that we shot off bombs only to signal to the sailing ship that we were ready to give her assistance. I cannot understand such an explanation of the case.'

2d. During the whole night (and I was on deck since 1 A. M.), although the fog was so thick that

standing on the stern of the ship I could not make out our funnels, our speed was at no time diminished. 913

3d. Before the collision occurred, *I am told,* the fog horn of the sailing vessel was heard and answered by our ship, and instead of reversing our engines, our speed was not even diminished.

4th. The log of the *Cromartyshire* shows that we were 60 miles off Sable Island, which is much out of the usual course.

5th. During the first twelve minutes after the collision, no attempt was made to lower any boat. 914

6th. At no time from the time of the collision to the time the ship sank were any officers seen on deck except the Captain and the second officer.

7th. When after twelve minutes the sailors began to take the awnings off the boats I was standing near the second purser's boat and two sailors instead of cutting the cords fastening the awnings, were just hauling them off.

8th. The cords fastening the awning to the boats were all rusted at the places where they were in contact with the metal rings of the awning, which shows that they had not been taken off for drilling for a very long time. 915

9th. The passengers were all grouped amidships on the port side, awaiting for directions from the officers and the crew, and at no time did any one give them directions what to do or where to go. When we were on our raft rowing with the two oars that we found floating, and although there were

916 sailors of *La Bourgogne* among us, yet no one had an idea that right under the floor of the raft was one pair of oars belonging to the raft. It was fully three hours after we were afloat that I thought of them myself; and we gave them to the people on the other raft that we had picked up, who had none. How is it that no sailor knew or thought of this pair of oars?

10th. Fifteen minutes after the collision the Captain's boat with four sailors on board was lowered in the water by them and they put to sea without giving any help or even standing near the scene of
917 disaster.

11th. Same boat had been lowered half way down by same sailors immediately after the collision, one passenger jumped in the boat then, and these same sailors beat him and made him return on board our ship.

12th. When we came in good sight of the *Cromartyshire* five hours after the ship went down we saw two boats of *La Bourgogne* tied up to the stern of the sailing ship, and although we were in plain sight of them, and that our raft was at every moment in danger of being overturned by the heavy
918 swell, no one came to our rescue until one hour after.

Deposition of Sauveur Santelli, taken de bene esse and marked Exh. C., Dec. 30, '01. 919

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The COMPAGNIE GENERALE TRANSATLANTIQUE for limitation of liability. 920

DEPOSITION OF SAUVEUR SANTELLI, taken on behalf of the Claimants, at the U. S. District Court Rooms, on the 7th day of August, 1900, at 11 o'clock, before Thomas Alexander, Esq., U. S. Commissioner.

APPEARANCES:

Messrs. JONES & GOVIN (Mr. KOPFF), for the Petitioner. 921

Messrs. BENEDICT & BENEDICT, for the Libellants.

Petitioner's counsel moves for an adjournment on the ground of his illness, and the same is refused.

Petitioner's counsel moves to set aside the subpœna on the ground: (1st) that this proceeding is in the nature of a penal action, and that no officers of the petitioner can be subpœnaed to testify in this proceeding.

922 (2dly.) He moves to set aside the subpœna on the ground that the call for log books is irregular and invalid because the same is the property of the petitioner and is temporarily and especially in the custody of the witness as an employee of the petitioner, and that an officer of the defendant company should be called upon to produce them.

(3dly.) That the cause is not in a condition to take testimony until the return day of the monition, which, in this case, is the 21st day of August.

(4thly.) The cause is not in a condition to take
923 testimony because no answer has been filed and no indication that the allegations of the petition will be controverted.

(5thly.) That the notice given to the petitioner's proctors is too short; the same having been served about eleven o'clock on August 6th.

(6thly.) Because petitioner's proctor is unable to proceed because of illness.

RAYMOND COTTER is sworn as interpreter.

924 Captain SAUVEUR SANTELLI is called upon to be sworn.

Petitioner's counsel objects to the Captain being sworn.

The Captain is sworn.

It is agreed that the testimony be taken by a stenographer.

Petitioner's counsel objects to the witness's testifying, on the grounds for which he has made a motion to set aside the subpœna, and asks that all these questions be certified by the Commissioner to the Court for decision.

SAUVEUR SANTELLI, being duly sworn and examined as a witness for the claimant, testifies through the interpreter: 925

By Mr. Benedict:

Q. Your age? A. Fifty-nine years.

Q. You are captain of steamships?

Objected to.

A. Yes, sir.

Q. You are in the service of the Compagnie Generale Transatlantique?

Objected to.

926

A. Yes.

Q. What vessel are you commander of now?

Objected to.

A. *La Touraine.*

Q. When do you expect to leave New York?

Objected to.

A. Thursday morning at ten o'clock.

Q. For Havre?

Objected to.

A. Yes.

Q. How long have you been in the service of the Company? 927

Objected to.

A. Twenty-three years.

Q. What vessels have you commanded as such captain?

Objected to.

A. The *Ville de Paris, Le Periere, St. Laurent, L'Amerique, La Gascogne* and *La Touraine.*

928 Q. How long have you been commander of *La Touraine?*

Objected to.

A. Seven years.

Q. Have you been commander of her on every voyage during that time?

Objected to.

A. All the time.

Q. Have you brought the copy of the service a bord that you were directed by the subpœna to bring?

929 Objected to.

A. I have not it on board.

Q. You are familiar with it?

Objected to.

A. I know it generally, but I think there are some regulations that have been changed that I don't know just at present.

Q. How lately have you seen that book?

Objected to.

A. I probably haven't opened it for fifteen years. I have been in the service of the company and know
930 it by heart.

Q. I show you a paper which is marked Claimants' Ex. 1 for identification, July 25th, and ask you to read that and see if that is not a copy of Article 395 of the Service a bord?

Petitioner's counsel objects to this question and instructs witness not to answer.

The Witness: I refuse to answer.

Q. Do you refuse to read the paper?

Objected to.

Witness reads the paper and states: I have read the paper. 931

Q. Are you familiar with the article which you have just read?

Same objection and instruction not to answer.

The Witness: I refuse to answer.

Q. Is there any other instruction which has been furnished to you as the master, in reference to the subject of the speed of steamers in fog, besides this one which you read?

Same objection and instruction. 932

The Witness: I refuse to answer.

Q. In the month of May, 1894, was there not a collision between the *Touraine*, of which you were captain, and a vessel called the *Sully*, of Fecamp?

Same objection and instruction.

The Witness: I refuse to reply.

Q. Was there not, as a consequence of that collision, a legal proceeding taken before a Court in France, against you as master of the *Touraine?*

Same objection and instruction.

The Witness: I refuse to reply. 933

Q. Was there not a suit brought as a consequence of that collision, on behalf of Captain Cordier, the captain of the *Sully,* against the Compagnie Generale Transatlantique, to recover damages for the loss of the *Sully* in that collision?

Same objection and instruction.

The Witness: I refuse to answer.

Q. Were you not examined as a witness on behalf of the Compagnie Generale Transatlantique in

934 a legal proceeding taken against the Compagnie Generale to recover damages for the loss of the *Sully?*

Same objection and instruction.

The Witness: I refuse to reply.

Q. Was there not a decree of the Tribunale de Commerce de la Seine against the Compagnie Generale Transatlantique in a suit brought against the company by Captain Cordier of the *Sully* to recover damages for the loss of the *Sully* in that collision?

Same objection and instruction.

935

The Witness: I refuse to answer.

Q. Was not the decree of the Court in that case a decision against the company, as being in fault by reason of the too great speed in a fog of the *Touraine?*

Same objection and instruction.

The Witness: I do not answer.

Q. Was not the speed of the *Touraine* on that occasion, which was held to be too great, a speed of 16½ knots an hour?

Same objection and instruction.

936 The Witness: I do not answer.

Q. Did you ever see the decision of the Court in that case?

Same objection and instruction.

The Witness: I do not answer.

Q. Was it not a fact that at the time of that collision there was a dense fog, through which the *Touraine* was going at the time of the collision, at a speed of about 16½ knots?

Same objection and instruction.

The Witness: I do not answer. 937

Q. Have you ever conferred with any of the officers of the Compagnie Generale Transatlantique as to the custom of the steamers of the company to proceed at a high rate of speed in fogs?

Same objection and instruction.

The Witness: I do not answer.

Q. Have you here the logs of the *Touraine* which you were subpœnaed to produce?

Same objection.

A. Yes.

Q. Will you produce them for examination?

Petitioner's counsel objects to the production of the logs and instructs the witness not to produce them. 938

The Witness: I refuse to produce them.

Petitioner's counsel asks that the objections made to the questions be certified to the Court, and it is agreed that further examination of this witness shall be adjourned until the 3d of September, petitioner's counsel agreeing to produce the witness without further subpœna.

It is agreed between the counsel that the objections above noted are not to be brought up here before the 22d of August, and are to be presented to the Court at that time. 939

It is agreed that the presentation of the objections to questions to the Court be adjourned to Sept. 5, 1900, at 11 A. M., and that the examination of the witness be adjourned to Sept. 2d, 1900, at 11 A. M.

(Signed) JONES & GOVIN,
Procs. for Pet'r.

Hearing of objections further adjourned to September 19th, 1900, examination of witness remaining as above.

(Signed) JONES & GOVIN,
Procs. for Pet'r.

940 JANY. 4, 1901.

Mr. Murray and Mr. Benedict appeared at 2.30 P. M. and remained until 2.45, when Mr. Jones appeared.

Mr. Kopfe moves that hearing be adjourned until return of witness to New York. Mr. Benedict and Mr. Murray not objecting, motion granted, Mr. Jones agreeing to produce witness.

(Signed) THOS. ALEXANDER,
U. S. Com.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

941 I, THOMAS ALEXANDER, a Commissioner duly appointed by the District Court of the United States for the Southern District of New York,

De hereby certify, that on the 7th day of August, 1900, I was attended by Messrs. Benedict & Benedict, for claimants, and Messrs. Jones & Govin, for the petitioner, and by the witness who being of sound mind and lawful age, and the witness being by me first sworn to testify the truth, the whole truth and nothing but the truth, his testimony was taken by a stenographer in pursuance of a stipulation of the parties.

I further certify, that the reason for taking the
942 foregoing deposition is that the witness is material and necessary in the cause in the caption of the said deposition named, and that he is about to go to a greater distance than one hundred miles from the place of trial of the proceedings, viz., to France.

I further certify, that due notification of the time and place of taking the said deposition was made out and served on the attorneys for the petitioner to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said

deposition and caption named, nor in any way interested in the event of the cause named in said caption. 943

In testimony whereof, I have hereunto set my hand and seal, this 7th day of October, in the year of our Lord one thousand nine hundred and one of the Independence of the United States the one hundred and twenty-sixth.

THOS. ALEXANDER,
United States Commissioner,
Southern District of New York.

(Endorsed)—Ex. C, Dec. 30. August 7th, 1900.—Deposition of Sauveur Santelli.—United States District Court.—Filed Oct. 27, 1901. 944

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
"LA BOURGOGNE." 945

JONES & GOVIN, for the Petitioners.
BENEDICT & BENEDICT, for the Creditors.

BROWN, *J.*:

My rulings in the above matter are:

1. That any book of instructions issued by the company to its captains and in the possession or under the control of the witness, should be produced.

946 2. That any log of steamers in the possession or under the control of the captain, being a witness, should also be produced; neither the said log nor book of instructions being such books as are exempted from production.

3. That the witness should not refuse to answer questions put to him on the ground of supposed immateriality, but should answer all questions, any objections thereto being noted by the Commissioner, except that the witness may decline to answer, if his answers would tend to criminate himself, and he so testifies.

947

4. That counsel has no authority to instruct the witness not to answer.

September 22, 1900.

(A. B.)

948

At a Stated Term of the District Court 949
of the United States for the Southern
District of New York, held at the
Court Rooms in the City of New York,
on the 4th day of October, 1900.

Present—Hon. ADDISON BROWN,
District Judge.

IN THE MATTER
OF
The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief. 950

Sauveur Santelli, having heretofore been subpœnaed to testify as a witness before Thomas Alexander, Esq., United States Commissioner, on behalf of certain claimants in the above entitled proceeding, and having been directed by said subpœna to produce certain books or documents, and the said witness having duly appeared before said Commis- 951
sioner and having been sworn, and the examination having begun, and counsel for petitioner having been duly notified of said examination, and having been present on behalf of petitioner, and having objected to certain questions propounded to the witness by counsel for claimants, and having instructed the witness not to answer and not to produce the books or documents called for by the subpœna, all of which appears more fully by the Commissioner's notes of said examination, and the matter having been referred to the Court,

952 Now, after hearing Mr. Edward K. Jones for the petitioner, and Mr. Edward G. Benedict for said claimants, the Court makes the following rulings, and it is

Ordered, 1. That said Thomas Alexander is not disqualified as Commissioner to take the deposition of the witness because he is interested in the event of the cause to the extent of his fees as Commissioner heretofore appointed by the order of this Court to take proof of claims in this cause.

2. That any book of instructions issued by the company to its captains and in the possession or
953 under the control of the witness, be produced.

3. That any log of steamers in the possession of the captain, being a witness, be produced; neither the said log nor book of instructions being such books as are exempted from production.

4. That the witness do not refuse to answer questions put to him on the ground of supposed immateriality, but do answer all questions, any objections thereto being noted by the Commissioner, except that the witness may decline to answer, if his answers would tend to criminate himself, and he so testifies.

954 5. That counsel has no authority to instruct the witness not to answer.

And it is further ordered, that the aforesaid Sauveur Santelli do appear before this Court on the 9th day of October, 1900, at 2.30 o'clock P. M. and proceed with the examination.

ADDISON BROWN.

(Endorsed)—Order on petitioner's objections to deposition of Capt. Santelli.—Filed Oct. 16, 1900.

Deposition of Marius Poirot, taken de bene esse and offered in evidence as Respt.'s Ex 16, Oct. 11/01. 955

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of "LA BOURGOGNE," to limit its liability. 956

DEPOSITION OF MARIUS POIROT, taken in behalf of Claimants, at Room 60 in the U. S. Court House and Post Office Building on November 28th, 1900, at two o'clock in the afternoon, before Thomas Alexander, Esq., U. S. Commissioner.

APPEARANCES: 957

Messrs. BENEDICT & BENEDICT and A. GORDON MURRAY, for Claimant.

Messrs. JONES & GOVIN (Mr. KOPFE), for Petitioners.

The witness MARIUS POIROT, duly sworn.

Mr. Benedict produces notice of taking of deposition.

Mr. Kopfe moves for an adjournment until December 26th, 1900, at 2 P. M., owing to absence of Mr. Jones from New York.

958 Mr. Benedict consents to adjournment if counsel will agree to produce witness at adjourned day.

Counsel so agrees.

Motion granted.

DECEMBER 26th, 1900.

Present—Mr. BENEDICT and Mr. MURRAY,

who waited from 2 P. M. to 2.43 P. M.

The witness was not produced pursuant to stipulation, nor did counsel for the petitioner, nor the witness appear.

959 Mr. Benedict moves that this matter be adjourned to a day to be fixed by the Commissioner in notice to counsel for petitioner.

Motion granted.

NEW YORK, April 16, 1901.

Present—THE COMMISSIONER;
Mr. BENEDICT and Mr. MURRAY, for the Claimants;
Mr. JONES and Mr. KOPF, for the Petitioners.

960

CANTAIN STETSON is duly sworn as interpreter.

It is stipulated that the deposition of the witness be taken by a stenographer; that when written out it shall be signed by the witness before the Commissioner or a Notary Public with the like force as if before the Commissioner, filing waived copy to be served upon petitioners' proctors.

MARIUS POIROT, recalled: 961

By Mr. Benedict:

Q. Are you in the employ of the Compagnie Generale Transatlantique? A. Yes.

Q. How long have you been in that employ? A. Seven years and a half.

Q. What vessels of theirs have you been in command of during that time? A. *St. Laurent, Normandie, Champagne, Aquitaine, Lorraine* and the *Bourgogne* for one trip. I was not her regular captain.

Q. Did all those vessels run between Havre and New York? A. No; the *St. Laurent* went to the 962
West Indies.

Q. All the rest ran between Havre and New York? A. Yes.

Q. When was it that you were master of the *Bourgogne?* A. 1896.

Q. While you were captain of her there was a collision, was there not, between her and the *Ailsa?* A. Yes.

Q. That collision was in a fog? A. Yes.

Q. The *Bourgogne* was held free from fault in that collision, was she not? A. Yes.

Q. She was going at a moderate rate of speed, was she not? A. Yes. 963

Q. What was the tonnage of the *Bourgogne?* A. About 10,000 tons; I don't know exactly.

Q. What was the power of her engines? A. 7,000 horse power.

Q. What was her rate of full speed? A. 17 to 17½ knots.

Q. What was the pitch of her screw? A. I don't recollect.

Q. Do you know how many revolutions of her screw she made at full speed? A. I don't recollect exactly.

964 Q. What was the rate of speed that the *Bourgogne* was making before the collision with the *Ailsa* as she went down after she met fog? A. She had no speed at all, so to speak, except that of the current; almost none.

Q. Her engines were stopped, were they not? A. Yes.

Q. About what was the speed she was making before her engines were stopped? A. I can't say; the engines stopped and then went through revolutions and then stopped again. She had almost no speed at all.

Q. About how many knots an hour was she mak-
965 ing? A. About the speed of the current.

Q. Was she not making more speed than the current while her engines were in motion? A. Quite a while before she ran into the *Ailsa*, when she was some distance from her.

Q. She was then under what order? A. I don't understand the question.

Q. After the *Bourgogne* went into the fog under what order were her engines running? A. When the engine went at all it went as slow as possible, but for the greater part of the time it was stopped.

Q. What was the rate of speed that the *Bourgogne* was going as the *Bourgogne* entered the fog? A. I don't know.

966 Q. You were examined as a witness in the collision case between the *Ailsa* and the *Bourgogne*, were you not? A. Yes.

Mr. Jones: I object to this line of examination.

Q. Were you not asked this question:

> "Q. What did you do when the weather thickened after passing Robbins Reef? A. We lessened our speed.
>
> Q. To about what headway? A. To 6 or 7 knots."

Didn't you give that testimony in that suit? 967

Mr. Jones: I object and instruct the witness that he need not answer.

A. I don't recollect what I said at that time. Whatever I said was evidently true at the time.

Q. If you did say that she was going at that time after passing Robbins Reef at six or seven knots after the weather thickened, that was the fact, was it not? A. I at least thought it was.

Q. You remember that you were subpœnaed to attend before the Commissioner in November last? A. Yes.

Q. You remember that you were subpœnaed to bring the log books of your steamer at that time? 968
A. Yes, at that time.

Q. Have you brought them? A. No, I was not told to bring them this time.

Q. Have you been told not to bring those logs which you were subpœnaed to bring? A. Not that I recollect.

Q. You had the logs with you present when you were sworn at that time, did you not? A. Yes.

Q. What have you done with those since that time? A. I took them on board the ship again.

Q. On board of what ship? A. *La Lorraine*.

Q. Are they on board the *Lorraine* still? A. No, the *Lorraine* has been dismantled since that 969
time.

Q. What did you do with the logs? A. I handed them over to the company with all the material of the ship.

Q. Did you not understand that you were ordered by the Court to produce them on your examination? A. No.

Q. Did you read the subpœna? A. In November, yes.

Q. Was it the custom for you to return the logs to the company? A. Yes.

970 Q. When is it the custom to return them to the company? A. At the end of each voyage.

Q. At the end of each voyage? A. Yes.

Q. To what officer of the company are they returned? A. What we call the Service of the Outfitting.

Q. What was the name of the officer who was the chief of the service at that time when you returned that log? A. His name is Ducrot. He is Chef de l'Armament.

Q. Do you know how long that man has held that position? A. No, I don't recollect.

Q. How long have you known him to be in that position? A. Some years; I don't recollect exactly.

971 Q. What entries are made in the logs of the steamers, in the journal you keep on board? A. The incidents of the day.

Q. How many times are entries made during the 24 hours? A. After each watch the officer writes down whatever has occurred.

Q. Is not the direction of wind entered at each watch? A. Yes.

Q. And is not the character of the weather, whether foggy or not, entered? A. Yes, the general character of the weather.

Q. And is not the distance made by the vessel during each watch entered in the log? A. Yes, the

972 estimated distance.

Q. Is not the number of revolutions of the engines also entered? A. Yes.

Q. Was not the pitch of the screw of the *Bourgogne* 10 meters and her slip in ordinary fair weather 10 per cent.? A. That appears to me to be correct now, although I am not absolutely certain of it.

Q. Knowing the number of revolutions that the engine has made during the watch and knowing the pitch of the screw and the slip, can you not cal-

culate from those elements nearly what has been the speed of the steamer during the time? A. Yes, taking into account also the state of the sea. 973

Q. During the trip of the *Lorraine* for which you were subpœnaed to bring the log, did you have any foggy weather? A. I don't recollect.

Q. The logs of that voyage would show it, would they not? A. Yes.

Q. When did you leave Havre on the present voyage? A. Saturday, the 6th of April.

Q. Did you have any fog coming over? A. No; hazy weather but not foggy.

Q. Do you know of any agreement among the steamship companies navigating between this port and England and France as to the routes to be observed by vessels going east and vessels going west? A. At present, yes. 974

Q. When was that agreement entered into? A. don't recollect.

Q. When did the Compagnie Generale Transatlantique first come into that agreement? A. I don't recollect.

Q. Did you ever get any order from the company with reference to pursuing the route agreed upon by that agreement? A. Yes.

Q. When did you receive those instructions? A. I don't recollect.

Q. About how long ago; two years ago, three years ago? A. I don't recollect. For two years I have not been going very much. 975

Q. You were examined once before, were you not, in reference to this matter? A. Yes.

Q. When you were examined at that time in May, 1899, didn't you say that the agreement was made in January, 1899, or the last part of 1898? A. I don't recollect, it may be, but I don't recollect

Q. If you did say that, that was according to your recollection then, was it not? A. Yes, certainly.

976 Q. Do you know whether such an agreement between steamship companies was in existence before the Compagnie Generale Transatlantique agreed to it? A. I don't know, but I don't think it did.

Q. Do you remember testifying on that examination that you did have fog on that previous trip of the *Champagne?* A. I don't recollect.

Q. Don't you remember that you stated that you did have fog and that you were asked to look in the log and testify as to how much fog you had and that you refused by advice of counsel? A. I don't recollect; I don't remember whether there was any fog or not, but I remember that I refused to look in
977 the log book to see.

Mr. Jones: Q. Was your refusal sustained by the Court? A. Yes.

Mr. Benedict objects and moves to strike out the answer.

Q. Did you ever have any other collision while you have been in the employ of the Compagnie Generale except the collision with the *Ailsa?* A. No; that is the only one.

Q. When your examination in November last was begun and adjourned, you understood, did you not, that you were to attend and be examined at
978 some later day? A. Yes; I was told that I should have to present myself here later.

Q. Who told you that? A. The Commissioner.

Q. Were you also told by the counsel for the petitioners? A. Mr. Jones was not here.

Q. By some one from his office, that you were to be here later to be examined? A. I recollect that I was told that I would have to appear again before the Court.

Q. And were you not told that you must produce your log whenever you were examined in accordance with the subpœna? A. I don't recollect that.

Q. Do you say that you have received any in- 979
structions at all from your counsel as to bringing that log whenever you were examined? A. I don't recollect that I received any.

Q. How many logs do you return to the office of the company at the end of each voyage? A. At the time that the *Lorraine* laid up I turned over to the office everything there was on board; and I say, that not having navigated for the last two years, I can't tell you how many I have turned over to the office.

Mr. Benedict moves to strike out the answer and repeats the question.

Q. How many logs do you return to the office of the company at the end of each voyage, usually? 980
A. One; there is only one for each voyage.

Q. There is the deck log, which is called the journal d'abord? A. Yes, sir.

Q. Is there not an engineer's log also? A. Yes; one of each kind.

Q. One of each kind, which makes two? A. Yes. That makes one journal. They go together.

CROSS-EXAMINED BY MR. JONES:

Q. You have been asked about the collision between the *Bourgogne* and the *Ailsa* and have stated that that was the only collision that you ever had. Where and before what judge was that case tried? 981
A. Before Judge Brown.

Q. In this Court? A. Yes; in New York.

Q. And his decision and the decision of the Circuit Court of Appeals were both in your favor? A. Yes.

Q. Both Courts holding that you were entirely free from fault? A. Yes.

By Mr. Benedict:

Q. When do you expect to return to this port? A. In four weeks, I think.

982 Mr. Benedict: I notify you that you were bound, under the subpœna which was served upon you, to have produced at this examination now the logs which you were then subpœnaed to produce. And that your failure to produce them here to-day is in truth a disobedience of the order of the Court. I suppose that you were not given to understand that you were required to produce those at this time.

Q. Will you produce those logs in obedience to that subpœna on your next return to New York, to which your examination will be adjourned? A. No. I have not the right to take the log books off from the ship; they are the property of the company.

983 Q. But those log books are not on the ship? A. No.

Q. Will you make any effort to attend and produce them? A. I can ask for them; but I haven't got them; they don't belong to me.

Q. My question was whether you will produce, at an adjournment on your next arrival, the log which you were required to produce in November? A. I haven't got them.

Q. Will you inform the officers of the company in Havre that you were under subpœna to produce those logs in November last and that you ought to produce them on this examination, and will you

984 endeavor to bring those logs at the next examination? A. They are not mine; I don't know whether they will give them to me.

Q. Will you endeavor to do so? A. I can ask for them. As to making efforts, if they don't wish to give them to me, my request for them will be useless.

Q. Will you ask for them? A. I can convey the request that has been given to me here.

Q. Will you do it? A. I will inform them of what has been said to me here now.

Mr. Benedict asks for an adjournment of four weeks. 985

Mr. Jones objects. Motion granted.

Counsel for petitioner refuses to attend any adjournment of the examination of this witness, on the ground that the same is unauthorized in the case of a deposition *de bene esse.*

The Commissioner adjourns the further taking of the deposition until the 14th of May, at 2 P. M., and directs the witness to attend at that time.

Mr. Benedict: And I give notice that if the logs are not then produced a motion will be made to the Court to punish you for disobedience of the sub- 986
pœna.

Counsel for the petitioner furthermore objects to the direction of the Commissioner to the witness to attend on the adjourned day on the ground that the Commissioner has no power to make any such order or direction.

Counsel for the petitioner further moves to suppress the deposition, on the ground that the examination of the witness has not been completed.

MAY 14, 1901.

Pursuant to adjournment.

987

Present—Mr. BENEDICT and Mr. MURRAY, at 2.30 o'clock.

The witness MARIUS POIROT was called and did not appear.

MAY 15, 1901.

Present—Commissioner ALEXANDER;
Mr. JONES, for Petitioner;
Mr. BENEDICT, for Respondent.

988 MARIUS POIROT, a witness for the petitioner, resumes the stand and testifies (examined through the interpreter, Mr. Stetson):

By Mr. Benedict:

Q. Have you produced the logs which you were subpœnaed to produce? A. No. I haven't them here. I haven't received any subpœna ordering me to produce the log books.

By Mr. Jones:

Q. What do you mean by not receiving any sub-
989 pœna to produce the logs? A. I mean that I have had no order from the Court. The last time I was here the Judge, the Commissioner, told me to come back here Tuesday, the 14th of May; and I asked at that time whether he added anything more, and it was replied that he had not added anything more.

By Mr. Benedict:

Q. You said at the last hearing that you would inform the officers of the company in Havre that you were under subpœna to produce these logs here, and that you would endeavor to get them here. Have you done so? A. Yes. I informed the chief
990 of the equipment bureau.

By Mr. Jones:

Q. At Havre? A. Yes.

By Mr. Benedict:

Q. Did you ask for the logs? A. I did not ask for the logs. I informed them of what had been said to me.

Q. Did you inform him that a motion would be made to attach you for contempt if you didn't produce those logs?

The Interpreter: You mean to have him ar- 991
rested?

Mr. Benedict: Yes, to have him arrested.

A. No, I did not tell him that.

Q. Did you make any effort at all to obtain the logs? A. I have no efforts to make in that direction. I said at the last meeting here that that did not concern me.

Mr. Benedict: I move to strike out the answer and I repeat the question:

Q. (Repeated.) Did you make any effort at all to obtain the logs? A. I made no effort. I simply related what I had said here and what had been 992
said here.

Q. Did the officer of the company understand that you were under subpœna of the Court, that you had been subpœnaed? A. I don't know what he understood.

Q. Did you tell him so? A. I told him exactly what happened here, that I had promised to make a statement to him of the occurrences.

Q. What reply did he make? A. He didn't reply.

Q. Did you give him any other information by writing except what you have said here—by writing or in any other way except just what you have said here? A. No, I gave him nothing in writing.

Q. Do you know whether any communication 993
was made in reference to the matter by the counsel here present to the officers of the company in reference to your producing the logs? A. I don't know.

Q. (Showing witness a series of charts.) Are you familiar with these charts? A. Yes, certainly.

Q. Are the petitioner's vessels supplied with charts similar to these? A. I don't know. I have them.

The charts shown to the witness are Pilot Charts of the North Atlantic Ocean for from January to July, 1898.

994 The charts are marked by the Commissioner Exhibits A-1 to A-7.

REDIRECT BY COUNSEL FOR PETITIONER:

By Mr. Jones:

Q. Did you observe that these are Pilot Charts of the North Atlantic Ocean from January to July, 1898? A. No, I only noticed the last one.

Q. When you answered Mr. Benedict by saying that your ship, the *Lorraine*, was supplied with similar charts, did you have in mind the period of time between January and July, 1898, and the
995 present time? A. My ship did not exist at that time.

Q. Your answer saying that your ship is supplied with those charts refers only to this present time? A. Yes.

RECROSS BY COUNSEL FOR RESPONDENT:

By Mr. Benedict:

Q. How long have you been furnished with charts of this kind? A. Since I am navigating from Havre to New York.

996 Q. All the while you have been on the vessels of the Company Generale, you have had Pilot Charts like those for the time that you were running, isn't that so? A. It is not the Trans-Atlantic Line that gives me those charts.

Q. That does not answer my question. (Question repeated.) All the while you have been on the vessels of the Company Generale you have had Pilot Charts like this for the time that you were running, isn't that so? A. For the greater part of the time, perhaps, not all the time.

Q. Did you not have such charts as these during

the period from January to July, 1898—similar charts is the question? A. No, not for that time. 997

Q. When did you first have any similar to those? A. I don't know whether I had them or not.

Q. What did you mean then by saying that you generally had had similar charts during all the time that you had been a navigator? A. I have had those charts frequently. I don't know whether I have ever had these same charts, but in any event I haven't them now.

By Mr. Jones:

Q. Have you read over the minutes of the last hearing and are you ready to sign them as correct? A. I have read these minutes and they are substantially correct. But there is lacking at the end a statement of the fact that when the Commissioner was requested by Mr. Benedict to inform me that I should appear here at two o'clock on the 14th of May, 1901, I understood Mr. Benedict to request him to also inform me that I was required by the terms of my subpœna to produce the logs in question. I also understood that the Commissioner refused to so instruct me. And I asked the question whether the Commissioner added the words as requested by Mr. Benedict, and I understood that he did not add them. I wish that to be added to these minutes before I sign them. 998 999

Mr. Benedict: I want this to be added: That after that occurred I gave to the witness personal notice that if those logs were not produced at this hearing a motion would be made to the Court to punish him for disobedience of the subpœna.

The Commissioner has nothing to say.

It is hereby agreed that the notes of this day's hearing shall be read to the witness and that he shall sign the stenographer's notes, such signing to be equivalent to signing the whole deposition after it is written out.

1000 The record having been read to the witness up to this point, the witness further states, in reply to what Mr. Benedict wishes added to the minutes, that he understood he was to obey the instructions of the Commissioner and that he was not required to obey the special instructions of Mr. Benedict.

By Mr. Benedict:

Q. How did you come to understand that? A. I understood, particularly after I had made a special question in regard to that, that the Commissioner instructed me to appear here in person and did not give me the order to bring any books here with me,
1001 and that when I had appeared in person I had done all that was required.

The Commissioner states that after instructing the witness to attend here to-day he further informed him that the subpœna spoke for itself.

(Signed) POIROT.

UNITED STATES OF AMERICA, }
Southern District of New York, } ss.:

I, THOMAS ALEXANDER, a Commissioner duly appointed by the District Court of the United States for the Southern District of New York,

Do hereby certify, that on the 16th day of April
1002 and 15th day of May, 1901, I was attended by Messrs. Benedict & Benedict, and A. Gordon Murray, for claimants, and Messrs. Jones & Govin, for the petitioner, and by the witness, who, being of sound mind and lawful age, and the witness being by me first sworn to testify the truth, the whole truth and nothing but the truth, his testimony was taken by a stenographer in pursuance of a stipulation of the parties.

I further certify, that the reason for taking the foregoing deposition is that the witness is material and necessary in the cause in the caption of the

said deposition named, and that he is about to go 1003
to a greater distance than one hundred miles from the place of trial of the proceedings, viz., to France.

I further certify, that due notification of the time and place of taking the said deposition was made out and served on the attorneys for the petitioner to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

And I do further certify, that I am not of counsel nor attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof, I have hereunto set my 1004
hand and seal, this 7th day of October, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the one hundred and twenty-sixth.

(Signed) THOS. ALEXANDER,
United States Commissioner,
Southern District of New York.

1005

1006 DISTRICT COURT OF THE UNITED STATES,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA
1007 BOURGOGNE," for limitation of liability and other relief.

UNITED STATES OF AMERICA, Southern District of New York, } ss:

MARIUS POIROT, being duly sworn, deposes and says:

That he is the commandant of the petitioner's steamer *La Lorraine;* that upon leaving Commissioner Alexander's room to-day, after deponent's ex- served by Mr. Benedict with the annexed notice; the purport of the said notice is that a motion will
1008 be made to punish me for contempt for not producing the "logs which I was subpœnaed to produce on such examination."

Deponent says that he was not served with any such subpœna; that the only subpœna served on deponent was some time in November last, which the deponent complied with. And deponent states that his understanding of a subpœna of this kind is that it is for the day to which it relates only, and he has never understood, and does not now understand, that he is under any subpœna or that he was under any subpœna to appear to-day; but on the

contrary, deponent's appearance at to-day's session was in compliance with the direction of Commissioner Alexander. 1009

(Signed) POIROT.

Sworn to before me this 15th day of May, 1901.
(Signed) FREDERICK KOPF,
Notary Public (73),
[SEAL.] N. Y. Co.

(Endorsed)—Affidavit of Marius Poirot in opposition to motion to punish him for contempt. 1010

IN THE MATTER
OF
The petition of the COMP. GEN. TRANSATLANTIQUE.

TO MARIUS POIROT: 1011

You will please take notice that on your deposition and on the subpœna heretofore served on you, a motion will be to this Court on the 21st day of May, 1901, at 11 A. M., to attach you for contempt for failing to produce on your examination on the 15th May, 1901, the logs which you were subpœnaed to produce on such examination.

May 15, 1901.

Yours, &c.,
BENEDICT & BENEDICT,
Proct's for Desloins.

1012 **Deposition Emanuel Fajolle taken de bene esse and offered in evidence as Respt.'s Exh. 17, Oct. 11, '01.**

U. S. DIST. COURT.

S. D. of N. Y.

IN THE MATTER

OF

1013

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of S. S. "LA BOURGOGNE."

Before THOS ALEXANDER, U. S. Commissioner.

JULY 24, 1900.

Present—Mr. R. D. BENEDICT and Mr. A. G. MURRAY, Proctors for Claimants; EDWARD
1014 STEPHENS and JONES & GOVIN, for Petitioner.

Mr. Benedict produces a notice of taking of deposition *de bene esse* of Captain Fajolle and proof of service thereof upon Jones & Govin.

The witness present.

Mr. Stephens moves for an adjournment of one week on the ground of the absence from the city of Ed. K. Jones, Esq., senior counsel for petitioner and the only counsel familiar with this litigation.

Commissioner asks if the witness will be present

for examination one week from to-day, to which 1015
counsel answers, No, witness leaves on Thursday of this week for Havre, expecting to return in one month. Motion denied and exception.

Petitioner's counsel also objects to proceeding with this proposed examination on the ground, first, that the claimants are not in a position to take testimony before the return day of the monition and before serving an answer to the petition. Second, on the ground that this is a penal proceeding and that the desired witness is an officer of the petitioner and therefore cannot be required to testify herein. Third, on the ground that the notice of taking this deposition is unreasonably short, being 1016
less than 24 hours.

The Commissioner calls upon the witness to stand up and be sworn in this proceeding. Mr. Raymond Cotte is sworn as an interpreter. The Commissioner, through the interpreter, calls upon the witness, Captain Fajolle, to stand up and have the oath administered to him. Witness rises. Petitioner's counsel objects to the witness being sworn. Commissioner insists on the witness taking the oath. Petitioner's counsel instructs the witness not to take the oath. The Commissioner asks the witness whether he will now take the oath. Witness refuses to be sworn. The Commissioner 1017
informs the witness that his refusal to be sworn is a basis upon which a motion may be made to the Court to punish him for contempt.

The witness says that he was brought here upon a notice in the English language, which language he does not understand, and that he has committed no crime. He is asked to take an oath without informing him for what reason he is here, consequently he persists in his refusal, as he knows neither his judges, his accusers, nor the reason for which he is accused.

1018 The Commissioner informs the witness that this is not a criminal proceeding against him, but his testimony is described in behalf of certain persons who have filed claims against the proceeds of the *La Bourgogne* in the petition of the Compagnie Generale Transatlantique to limit its liability as owner of the *La Bourgogne,* and that no accusation is made against him.

The witness states that in consequence of what has just been stated to him, that upon advice of his counsel I consider that I have not brought here any testimony in a matter which does not concern him.

1019 The Commissioner still insists that the witness be sworn. The witness says, I have said all I have to say on this question.

The Commissioner asks, Does he still refuse to be sworn? He refuses.

Petitioner's counsel desires to have noted that prior to the time the witness was asked if he would take the oath Petitioner's counsel requested the Commissioner to certify the objections to the Court for its decision, and that it, because of the refusal of the Commissioner to make this note, that the witness was instructed by petitioner's counsel not to take the oath.

1020 Proceeding adjourned to a day to be fixed by the Commissioner.

JULY 25, 1900.

Present—Mr. BENEDICT, Messrs. JONES & GOVIN and Capt. FAJOLLE, the witness, who was sworn.

On consent of parties examination adjourned to 12.15 to-day.

It was also consented that testimony be taken by a stenographer.

THOS. ALEXANDER,
U. S. Com.

UNITED STATES DISTRICT COURT, 1021

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for a limitation of its liability and other relief. 1022

Upon the minutes of the Commissioner, Thos. Alexander, Esq., and the affidavit of Robt. D. Benedict, Esq., sworn to the 24th day of July, 1900, and the original subpœna, with proof of service endorsed thereon, it is hereby

Ordered that Fajolle, captain of petitioner's steamship *La Champagne,* show cause before me at the court room of the United States District Court for the Southern District of New York on the 25th day of July, 1900, at 10.30 o'clock,

Why an attachment should not issue against him to punish him for contempt of court in that he refused to take the oath and be examined as a witness in accordance with the said subpœna. 1023

New York, July 24, 1900.

(Signed) EDWARD B. THOMAS,
U. S. J.

1024 U. S. DISTRICT COURT.

IN THE MATTER

OF

The petition of the COMP. GEN. TRANSATLANTIQUE for a limitation of its liability.

1025 Southern District of New York, ss:

ROBERT D. BENEDICT, being duly sworn, says he is one of the proctors for claimants herein; that he attended before Thomas Alexander, the U. S. Commissioner, in pursuance of the notice attached to said Commissioner's minutes; that the witness named in said notice had been duly subpœnaed, as appears by the subpœna and the certificate of the U. S. Marshal thereon endorsed, which are hereto attached; that the counsel for the petitioner was also present and instructed the witness not to be sworn, and that said witness thereupon refused to
1026 be sworn as a witness under said subpœna, and that the whole of the proceedings before said Commissioner appear in the minutes of said Commissioner, which are herewith submitted.

(Signed) R. D. BENEDICT.

Sworn to before me this 24 July, 1900.

(Signed) THOS. ALEXANDER,
U. S. Com.

THE PRESIDENT OF THE UNITED STATES OF AMERICA 1027
TO CAPT. FAJOLLE OF S. S. "LA CHAMPAGNE,"
GREETING:

We command you, that all business and excuses being laid aside, you appear and attend before Thomas Alexander, U. S. Commissioner for the Southern District of New York, at his office in the United States Court and Post Office Building, in the City of New York, on the 24th day of July, 1900, at 12 o'clock in the noon, to testify and give evidence in a certain matter now pending undetermined in the said Court, In the Matter of the Petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne,* for Limita- 1028
tion of Liability, on the part of the claimants, and that you bring with you and produce at the time and place aforesaid a certain book of instructions furnished to you by the Compagnie Generale Transatlantique and entitled "Service a bord des Paquebots," and that you also bring with you all log-books of the steamship *La Champagne,* whether logs of the deck or logs of the engine-room, in your possession or under your control, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premises. And for a failure to attend, you will be deemed guilty of contempt of court, and 1029
liable to pay all losses and damages sustained thereby to the party aggrieved, and forfeit two hundred and fifty dollars in addition thereto.

Witness the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York, the 20th day of July in the year of our Lord one thousand nine hundred.

S. H. LYMAN,
Clerk.

BENEDICT & BENEDICT,
Proctors,
58 Wall Street.

1030 (Endorsed)—I hereby certify that on the 23d day of July, 1900, at the City of New York, in my district, I personally served the within Subp. Duces Tecum upon the within-named witness, Captain Fajolle, of the steamship *La Champagne,* by exhibiting to him the within original, and at the same time leaving with him a copy thereof. At same time and place I delivered to him $1.60, witness fee and mileage. Wm. Henkel, United States Marshal, Southern District of New York.—Dated July 24, 1900. J. E. D.—Original. United States District Court. In the Matter of the Petition of Com-
1031 pagnie Generale Transatlantique for Limitation of Liability.—Original Subpœna Duces Tecum. —4256.—Benedict & Benedict, Proctors, 58 Wall St.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

1032 The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

Southern District of New York, ss:

A. G. MURRAY, being duly sworn, deposes and says that on the 25th day of July, 1900, at the office of La Compagnie Generale Transatlantique in

the City of New York, he served the within order, 1033
together with the papers upon which said order was granted, upon Captain Fajolle, captain of the steamship *La Champagne*, by delivering to him a copy of said order and papers, and at the same time exhibiting to him the original order with the signature of the Judge thereto. He further says that he is over the age of twenty-one years, and resides at #72 East 34th Street, New York City, and that he knew the person so served to be the said Captain Fajolle.

A. G. MURRAY.

Sworn to before me this 25th day of July, 1900. } 1034

ALEX. GILCHRIST, JR.,
[SEAL.] Notary Public, Kings & N. Y. Cos.

(Endorsed)—Affts. & Order to Show Cause why an attcht. should not issue & proof of service.—U. S. District Court.—Filed July 25, 1900.—Witness was directed to proceed with the examination. E. B. T., *U. S. J.*

JULY 25TH, 1900, 12.15 P. M.

Met pursuant to adjournment, same parties be- 1035
ing present as heretofore noted, and the examination proceeds.

It is agreed that the signing of this deposition by witness be waived.

Petitioner's counsel moves to set aside the subpœna on the grounds embodied in the objections which were made yesterday, and also on the additional grounds that there is no warrant in law for a subpœna *duces tecum* requiring the production of the log-books and other books mentioned in

1036 that subpœna; and also requests the Commissioner, before proceeding, to certify the objections and the motion to the Court for its decision.

The Commissioner states that he cannot rule upon a motion of that kind, and informs counsel that the Judge is in the next room, to whom the matter can be submitted.

The examination proceeds.

EMANUEL FAJOLLE, being duly sworn and examined as a witness for the claimants, testifies through an interpreter:

1037 By Mr. Benedict:

Q. What is your name? A. Emanuel Fajolle.

Q. You are captain of the steamship *La Champagne,* are you not? A. Yes.

Q. She is one of the steamers of the Compagnie Generale Transatlantique? A. Yes.

Q. What is your name? A. Emanuel Fajolle.

Q. How long have you followed the sea? A. I served in the navy.

Q. How long did you serve in the navy? A. Twenty-five years.

Q. How long have you been in the employment of the Compagnie Generale Transatlantique? A.
1038 Two and a half years.

Q. What vessels have you been in command of? A. *La Normandie, St. Simon, La Navarre, La Champagne.*

Q. Which of these vessels run between New York and Havre? A. *La Normandie, La Navarre* and *La Champagne.*

Q. How many voyages have you made in the *Champagne?* A. I don't remember; I have been on *La Champagne* since July last, a year ago.

Q. How long does it take *La Champagne* to make a voyage? A. Eight days.

Q. Has she not made about one voyage a month from Havre here to New York and back while you have been captain of her? A. It is precisely for the reason that we don't make one trip a month that I cannot tell you just how many we do make, because we don't make exactly one trip a month. Sometimes our sailing orders are changed and sometimes we make one and sometimes less. 1039

Q. But on the average have you not made about a voyage a month since you have been in command? A. I cannot answer that question because I don't issue the orders.

Q. Do you mean to say that you cannot tell whether *La Champagne* has made, during the year that you have been commander of her, about one voyage a month? 1040

Petitioner's counsel objects to the whole of this line of examination.

A. If you had specifically asked me how many voyages we made during that time, before I came here, I would have furnished you with the information; but some of these trips take a month, some six weeks, some two weeks, and I can't keep track of all these things in my mind for a year, how many trips we have really taken.

Q. Have you not made at least ten trips as master of *La Champagne* during the last year? 1041

Same objection.

A. It is not possible that we could have made ten tripgs during the year.

Q. How many is it possible that you could have made?

Same objection.

(No answer.)

(Qestion repeated.) How many is it possible that you could have made?

Same objection.

1042 A. I don't know exactly.

Q. About how many voyages did you make between New York and Havre as captain of the *Navarre?*

Same objection.

A. One.

Q. Did you make any voyages between New York and Havre as captain of *La Normandie?*

Same objection.

A. Yes.

Q. How many?

1043 Same objection.

A. I can't remember; it is impossible for me to.

Q. More than one?

Same objection.

A. You are fooling me.

Q. No, I am not. Did you make more than one?

Same objection.

A. Yes.

Q. When were you captain of *La Normandie?*

Same objection.

1044 A. I don't remember.

Q. Was it within the last two years that you were captain of *La Normandie?*

Same objection.

A. I commanded *La Normandie* less than two years.

Q. At what time, about; was it within two years?

Same objection.

A. No.

Q. Have you brought the copy of the *Service a* 1045
Bord that you were subpœnaed to bring?

Same objection.

A. I did not bring it.

Q. Why not?

Same objection.

A. Because I have not got it on board, and because I think that the editions were returned for revision, as they are very old.

Q. You received such a book from La Compagnie Generale, did you not?

Same objection. 1046

A. Yes, I have seen it.

Q. Such a book is given to all the captains of the company, is it not?

Same objection.

A. I don't know about the others, but I know that I have had one in my hand.

Q. Did you ever receive more than one?

Same objection.

(No answer.)

Q. Or did you receive one for each vessel?

1047

Same objection.

A. I didn't pay any attention to that; I had one. I never paid much attention to that book, because it contains the regulations of internal service of the company, and many details are changed daily by manuscript circulars.

Q. Was there any regulation furnished to you in that book, or otherwise, by the company, as to the speed of the steamers which you commanded, in fog? Answer yes or no.

Same objection.

1048 A. Yes.

Q. Was that regulation not numbered Article 395?

Same objection.

A. I can't remember all the numbers.

(Question repeated.) Was that regulation not numbered Article 395?

Same objection.

A. I repeat my answer, that I cannot recollect the numbers of all the articles of the regulations, and if there are 395 regulations I can't remember
1049 them all, remember them by numbers.

Q. Did you ever read the regulation furnished by the company in reference to the speed of steamers in a fog?

Same objection.

A. The regulations of the company are those adopted by all vessels.

Claimant's counsel moves to strike out the answer.

Petitioner's counsel objects to the motion, and desires that the answer be left standing.

1050 (Question repeated.) Did you ever read the regulations furnished by the company in reference to the speed of steamers in a fog?

Same objection.

A. Yes.

Q. Will you read the document that I show you, and say whether that is not a copy of the regulation that company furnishes?

Same objection.

A. The language seems to be that of the regula- 1051
tion, but I cannot tell whether it is word for word; it contains the sense.

The paper is marked for identification Claimants' Ex. 1 of this date.

Objected to.

Q. Do you remember that part of the regulation embraced in the second paragraph, beginning "La capitaine" and ending "occasionees"?

Same objection.

A. I think that this article was copied from the book, and I therefore remember it. 1052

Q. Remember this paragraph?

Same objection.

A. It is not necessary that you should show me this article in order to instruct me as to what my duties are; I know what my duties are; I knew that before I entered the service of the company.

(Question repeated.) Do you remember this paragraph?

Same objection.

A. If you insist upon my answering categorically all these questions and answering the thing that 1053
you have there in black and white and that you should therefore know, I shall become all muddled up and can't answer anything. You can't expect me to know by heart a thing of that kind. I know the general regulations, but I can't commit them to memory.

Q. Do you remember that the regulations required that in case of a slowing of the speed of the company's steamers a report must be made of the delay caused by that slowing in concert with the postal agent?

Same objection.

1054 A. I answer that this specially concerns the postal service for the purposes of the depositions taken to establish the premium allowed to the company by the postal authorities.

Q. You have not answered my question. (Question is repeated.) Do you remember that the regulations required that in case of a slowing of the speed of the company's steamers a report must be made of the delay caused by that slowing in concert with the postal agent?

Same objection.

A. I have never embarked on a ship on which
1055 there were postal agents.

Q. Do do not answer the question. (Question repeated.) Do you remember that the regulations required that in case of a slowing of the speed of the company's steamers a report must be made of the delay caused by that slowing in concert with the postal agent?

Same objection.

A. That is the regulation.

Q. Did you ever make such a report in case of a slowing of one of the company's steamers in concert with the postal agent?

1056 Same objection.

A. The only vessel I commanded on which there was a postal agent was the *St. Simon,* and I had no occasion to make any depositions.

Q. You don't answer my question; I want the question answered yes or no, simply. (Question repeated.) Did you ever make such a report in case of a slowing of one of the company's steamers in concert with the postal agent?

Same objection.

A. No.

Q. You have many times, have you not, slowed 1057
the speed of this company's steamer of which you were in command?

Same objection.

A. Yes.

Q. Have you never made a report of such slowing?

Same objection.

A. No, except where there is an accident to the machinery.

Q. The captains of the company's steamers keep, do they not, two logs, a decklog and an engineer's log? 1058

Same objection.

A. Yes.

Q. Have you produced the logs of *La Champagne?*

Same objection.

A. Yes.

Q. The two?

Same objection.

A. Yes.

Q. One of the deck and the other of the engineer? 1059

Same objection.

A. Yes.

Q. Are they printed or written?

Same objection.

Witness exhibits the logbooks.

Q. Is that log in the form that is furnished generally to the steamers of the company?

Same objection.

A. It is always the same form.

1060 Q. Will you produce that log to me for my examination?

Petitioner's counsel instructs the witness not to produce the logbooks.

A. No.

Q. What entries are kept usually in the decklogs; entries of what?

Same objection.

A. Everything is kept.

Q. Is that report that is exhibited here in your handwriting?

1061 Same objection.

A. No.

Q. Is it not signed by you?

Same objection.

A. Every day.

Q. Is there not entered in every day the direction which the vessel has pursued during the day?

Same objection.

A. Evidently, yes.

Q. Is there not also entered the direction of the wind?

1062 Same objection.

A. Yes.

Q. Is there not entered also the speed of the vessel?

Same objection.

A. The approximate speed is noted.

Q. Is there not an entry made of the weather for each watch, as to whether foggy or not?

Same objection.

A. Yes.

Q. Have you here the engineer's log? 1063

Same objection.

A. Yes.

Q. Will you produce that to me?

Petitioner's counsel instructs the witness not to produce the logbook.

A. No.

Q. Is there not entered in the engineer's log for each watch the number of turns that the screw has made on the steamers?

Same objection.

1064

A. Yes.

Q. Do you not, as captain of the steamer, know the pitch of the screw of the steamer?

Same objection.

Petitioner's counsel desires to have it noted that the interpreter cannot translate the word "pitch."

Q. Can you not tell, as captain of the steamer, by seeing the number of revolutions that the screw has made, about how far the steamer has traveled?

Same objection.

1065

A. I can tell it approximately.

Q. What would you do to arrive at it from the number of the revolutions?

Same objection.

A. I refuse to reply.

Q. Why do you refuse? A. Because it is a question of construction of the steamers, which must remain among us.

Q. It is necessary, is it not, for the captain of a steamer to know how far his vessel has traveled dur-

1066 ing the twenty-four hours, in order to navigate in safety?

Same objection.

A. if all the captains of vessels knew the distances which their vessels went there would never be any accidents.

(Question repeated.) It is necessary, is it not, for the captain of a steamer to know how far his vessel has traveled during the twenty-four hours, in order to navigate in safety?

Same objection.

1067 A. No captain can know the distance that he has traveled until he has made observations by the sun.

Q. If he has made observations by the sun then he can tell the distance exactly, can he not?

Same objection.

A. He does not yet know the distance that he has traveled because he measures the loxodromic distance and not the actual distance.

Q. Is it good seamanship for a captain to navigate without knowing as near as possible the distance that his ship travels every day?

1068 Petitioner's counsel objects, and instructs the witness not to answer, because he is not here as an expert.

Claimant's Counsel: He is here as my witness.

(Question repeated.) Is it good seamanship for a captain to navigate without knowing as near as possible the distance that his ship travels every day?

Petitioner's counsel instructs the witness not to answer, as the question involves expert knowledge, and he is not here and paid for that knowledge.

A. I refuse to reply, because this is the testimony of an expert, and I am not here as an expert. 1069

Q. When did you arrive in this port with *La Champagne?*

Same objection as heretofore noted.

A. At 7.40 in the morning, Sunday, the 22d of July.

Same objection.

Q. When did you leave Havre? A. The Saturday of the previous week.

Q. At what hour?

Same objection. 1070

A. At eleven o'clock, and some minutes; about eleven o'clock.

Q. How many knots did *La Champagne* make on that voyage?

Same objection.

A. I don't know.

Q. Can you not tell by looking at your log?

Same objection.

A. I didn't make the calculations.

Q. Can you not tell by looking at your log?

Same objection. 1071

A. In order to give the speed of the vessel I would have to give the average speed per hour for every day of the trip.

(Question repeated.) Can you not tell by looking at your log?

Same objection.

A. You will have to give me time to calculate.

Q. You can do it by examining that log?

Same objection.

1072 A. Oh, yes.

Q. Does not that log contain on every day of that voyage the number of knots that were made the previous day?

Same objection.

A. It contains the number of miles, approximately.

Q. Is there not an entry on each day of the total number of miles which were stated to have been made by the vessel the previous day?

Same objection.

1073 A. Approximately, yes.

Q. Then by adding together those numbers for the days of the voyage you can tell approximately how many knots your vessel made during the voyage, can you not?

Same objection.

A. Yes.

Q. Will you tell me how many miles she made the first day, from the log?

Objected to, and petitioner's counsel instructs the witness not to refer to the log.

1074 A. I will give you an approximate figure without looking at the log.

Q. How many miles did she make; give it approximately, the first day?

Same objection.

A. Four hundred.

Q. And the second.

Same objection.

A. I can't answer such a question.

Q. You have given us the number of miles the

first day; why can't you give the number of miles the second? 1075

Same objection.

A. Why do you want me to answer more exactly the second or the third day than I have answered for the first?

Q. I do not. I ask you to give me the second day approximately the distance, just as you gave it the first day.

Same objection.

A. Four hundred.

Q. And the third? 1076

Same objection.

A. Four hundred.

Q. And the fourth?

Same objection.

A. Four hundred.

Q. And the fifth?

Same objection.

A. Four hundred.

Q. And the sixth?

Same objection. 1077

A. Four hundred.

Q. Did you have any fog on that voyage coming over?

Same objection.

A. We had fog.

Q. Did you have any one day of fog?

Same objection.

A. Before answering the question I want to know what you understand by a fog?

1078 Q. What *you* understand by fog is the question?

Same objection.

A. There are three different kinds of fog.

Q. My question is did you have fog on all of any one day?

Same objection.

A. No.

Q. Did you have fog during any half day?

Same objection.

A. No.

1079 Q. For how long a time was the longest time that you had fog?

Same objection.

A. Three hours.

Q. Can you tell which day that was?

Same objection.

A. On the night of Saturday and Sunday before arrival.

Q. You have this approximately, of course?

Same objection.

A. Yes.

1080 Q. Will you look at your log and give the time of the fog, exactly?

Same objection, and petitioner's counsel instructs the witness not to refer to the log.

A. No, I will not examine the log.

Q. How thick was that fog; how would you describe it for density?

Same objection.

A. One cannot measure the density of a fog as one would measure the density of a liquid.

Q. No, of course not; but one can tell whether it 1081
was a thick fog or not; was this a thick fog?

Same objection.

A. When one is young the fog is always thick, and when one becomes older the fog becomes lighter.

Q. Will you answer as to whether the fog which you have spoken of as lasting for three hours shortly before your arrival was a thick fog or not?

Same objection.

A. It was thick.

Q. That was the night before you arrived here, or the night but one before; which? 1082

Same objection.

A. The night before we arrived.

Q. How do you count the day, from noon of one day to noon of the next, or from midnight to midnight?

Same objection.

A. I begin my day when I have a point of departure at which I can begin it.

Q. You make the entries in your log, do you not, different entries for each day?

Same objection. 1083

A. Yes.

Q. At what hour does the day begin in entering the log, at noon or at midnight?

Same objection.

A. This book is kept according to the regulations, but the captain guides his ship with his head, and not according to this book.

Q. My question is whether the entries of the day in the log of the ship begin at midnight or at noon?

Same objection.

1084 A. Noon.

Q. This voyage in the log beginning at noon?

Same objection.

A. I did not count from the log; I counted eight days, approximately.

Q. I have only asked as to six. How many miles, then, approximately, did *La Champagne* make on the seventh day?

Same objection.

A. Approximately the same number of miles as the sixth.

1085 Q. And on the eighth also?

Same objection.

A. The eighth day did not go until mid-day, as I reached my dock at 7.40, and I can't tell you approximately.

Q. Is the entry of this fog that you speak of, three hours, is that included in the entry of the last day, which was incomplete, from the previous day, which was complete?

Same objection.

A. The entry that was made in this log was made between Saturday at mid-day and Sunday at 7.40 in the morning, at the dock?

1086 Q. How many miles did *La Champagne* make, approximately, after Saturday noon?

Same objection.

A. I refuse to reply to this question, even approximately, as counsel wishes to establish the speed of *La Champagne* during that day, and that would have to be established accurately by calculation.

Q. Why not give it approximately, as well as the other days?

Same objection.

A. Because counsel does not ignore the fact that near land there are currents and I do not know exactly the force of the currents. 1087

Q. You can tell exactly, can you not, how many miles she made by looking at your log?

Same objection.

A. No.

Q. Is not the number of miles that she made after Saturday noon entered in the log?

Same objection.

A. As the days go from mid-day to mid-day, and as we reached the dock at 7.40, no entry was made at mid-day or Sunday. 1088

Q. I asked, is not the entry made in the log of the number of miles made by *La Champagne* between Saturday noon and her arrival?

Same objection.

A. I refuse to reply to that question.

Q. Why?

Same objection.

A. Because the number is not inscribed in the book.

Q. That was my question, whether it wasn't; do you say now that it was not? 1089

Same objection.

A. Yes.

Q. You have said that you had fog on that voyage during three different days. Which days besides the last one did you have fog?

Same objection.

A. There was a very light fog, and one could see at a distance of three miles.

Q. My question was what days those were?

Same objection.

1090 A. I don't remember.

Q. Was the fog on those other days light or thick, or either of them?

Same objection.

A. I thought it light.

Q. On both days?

Same objection.

A. I don't remember.

Q. How long did the fog last on each of those days?

Same objection.

1091 A. I don't remember.

Q. Do you say that on both of those days you could see three miles?

Same objection.

A. Yes.

Q. What was the average speed of *La Champagne* per hour on that voyage?

Same objection.

A. I don't know.

Q. What is the full speed of *La Champagne?*

Same objection.

1092 A. I do not know.

Q. Do you say that you have been captain of *La Champagne* for a year and don't know her maximum speed?

Same objection.

A. Yes, I say that I do not know the maximum speed of *La Champagne*.

Q. What was the maximum speed at which she was run during this last voyage?

Same objection.

A. Seventeen and a half knots. 1093

Q. Did you ever run her at a faster rate of speed than that?

Same objection.

A. Oh, no, no.

Q. Did you run her at that rate of speed during this last voyage, or did you reduce her speed at any time?

Same objection.

A. The speed varied.

Q. What was the lowest rate of speed that she was run?

1094

Same objection.

A. I pay attention when the speed of the vessel is great, but w[illegible] it is less I do not pay attention to it; in other w[illegible]rds I pay attention to the record that I make.

Q. In order to get the record it is necessary to know at what speed she has run, is it not?

Same objection.

A. I told you, seventeen and a half knots.

Q. You misunderstand. You have said that you paid attention to the record which the ship makes; by which I understand you mean the number of 1095 miles that she makes in a day. Am I correct in that?

Same objection.

A. I didn't intend to say that at all.

Q. What did you mean by the record?

A. I mean by that that if for example at one o'clock in the morning I should be running at the rate of 17½ knots I would say that at one o'clock I had made 17½ knots.

Q. But how could you tell how many miles she

1096 had made during the twenty-four hours without knowing how many miles she had made during each of the twenty-four hours?

Same objection.

A. I only know the speed of the vessel when I make observations by the sun.

Q. Do you not know it also by the entries in the log?

Same objection.

A. The entries are made watch by watch, and at that time there is nothing to control the speed.

Q. Are not the revolutions of the wheel made
1097 every watch, are not the number of revolutions entered every watch?

Same objection.

A. The number of revolutions has nothing to do with the speed of the ship, and I will prove it to you. If the vessel pitches, the screw is in the air, and goes quicker, and the indicator shows the speed which you are not attaining, and you can tell nothing by that.

Q. How do you arrive at the distance that the vessel has run when you cannot get an observation?

Same objection.

1098

A. We do as all other sailors do; we estimate it.

Q. By what; how do you estimate it?

Same objection.

A. Approximately; according to the weather.

Q. Is it not necessary that for that estimation you should know how fast the engine has been running?

Same objection.

A. Yes, but the number of turns lost must be taken into account.

Q. Were you in charge of the navigation during the time of the three hours' fog that you have spoken of? 1099

Same objection.

A. I am in charge of the navigation during the whole course of the voyage.

Q. Were you on the bridge during that time?

Same objection.

A. Oh, yes, and even when I could only see three miles ahead.

Q. I wasn't asking about the fog when you could see three miles ahead, but the thick fog that you speak of; were you on the bridge during the thick fog? 1100

Same objection.

A. Yes, I was always on the bridge.

Q. Was any order given as to the speed of *La Champagne* at that time?

Same objection.

A. Yes.

Q. What order?

Same objection.

A. To diminish the speed.

Q. How much? 1101

Same objection.

A. Half speed.

Q. How many turns less?

Same objection.

A. I don't remember; I know I diminished a good deal, but I don't remember how much.

Q. Can you not tell by examining the engineer's log for that watch how many revolutions were made during the watch?

Same objection.

1102 A. Yes.

Q. How many revolutions of the engine of *La Champagne* were made during that watch?

Same objection.

A. I don't remember exactly.

Q. How many revolutions does *La Champagne* make per minute when she is going 17½ knots?

Same objection.

A. 69-70.

Q. How many revolutions per minute were made by *La Champagne* during the three hours of fog that
1103 you have spoken of?

Same objection, and further that the question is already answered.

A. Change the form of the question, because I cannot answer, for when I get half speed we are going at half speed, if I hear a steamer then we slow down, and then we go at half speed again; I can't explain it to you.

Q. My question is how many revolutions a minute were entered in the log as made by *La Champagne* during that three hours of fog?

Same objection.

1104 A. I do not remember exactly.

Q. You signed the log, did you not, which stated the number of revolutions?

Same objection.

A. Yes.

Q. Will you look at the log and see how many revolutions were stated, which you signed as correct?

Objected to, and petitioner's counsel instructs the witness not to refer to the log.

A. No, I will not refer to the log. 1105

Q. Can you tell what speed of *La Champagne* you call half speed?

Same objection.

A. Twelve to thirteen knots.

Q. Can you tell how many revolutions of the screw of *La Champagne* it requires to make twelve or thirteen knots?

Same objection.

A. I have already refused to answer that question.

Q. Do you refuse now to answer? 1106

Same objection.

A. I will not answer now.

Q. Am I to understand you to say that during that three hours of fog *La Champagne* went at twelve or thirteen knots per hour?

Same objection.

A. No, that is not the understanding.

Q. Did you not say that when the fog came on the order was given to reduce the speed to half speed?

Same objection.

A. Yes. 1107

Q. And did you not also say that half speed was twelve or thirteen knots?

Same objection.

A. Yes.

Q. Then is it not true that during the fog *La Champagne* was run at twelve or thirteen knots?

Same objection.

A. Do you want me to explain?

1108 Q. No, I want you to answer yes or no, whether that was the fact?

Same objection.

A. No.

Q. At what speed was she run?

Same objection.

A. I can't tell, because the speed changed each time I had danger or the land near me.

Q. Was the land near you during this time of fog?

Same objection.

1109 A. Yes.

Q. What land?

Same objection.

A. Long Island.

Q. What other changes were made in the speed of *La Champagne* during that time of fog, except the order of "demi-vitesse?"

Same objection.

A. I put "slow" on account of a steamer that was going east; I stopped for two minutes in order to sound three miles from land; I again slowed
1110 in order that I might hear the fog horn at the Fire Island Lighthouse, in order to certainly recognize it. I cannot tell the speed you see.

Q. But during the time when there was no other danger present to your knowledge, except the fog, was not *La Champagne* run at a speed of at least twelve or thirteen knots?

Same objection.

A. Yes.

Q. Was it not more than that?

Same objection.

A. No. 1111

Q. Do you understand that the captain of a steamer is required to run his vessel during a fog at moderate speed?

Same objection.

A. The regulation states that the speed must be reduced.

Q. What do you mean by the "regulation?"

Same objection.

A. The International Regulations to prevent collisions at sea.

Q. Does not that regulation provide that the 1112
speed shall be moderate, instead of as you say that the speed shall be diminished?

Same objection.

A. It does say "Moderate."

Q. And do you say that when you were running *La Champagne* at a rate of twelve or thirteen knots, as you say, you were running her at a moderate speed?

Same objection.

A. Yes.

Q. Is there not, to your knowledge, an agreement between La Compagnie Generale Transatlantique 1113
and the French Government by virtue of which a premium is received by the company for certain speed of its vessels?

Same objection, and further the petitioner's counsel instructs the witness not to answer.

A. I refuse to answer.

Q. Do you not know that the speed of each vessel for each voyage is calculated from the logs for the purpose of calculating the premium which you have

1114 already testified was received by the company from the Government?

Same objection, and further the petitioner's counsel instructs the witness not to answer.

Q. When does the log of your voyage begin, and where? At Havre?

Same objection.

A. I refuse to answer.

Q. What becomes of the log of the ship at the end of each voyage?

Same objection.

1115

A. I don't know.

Q. Do not you dispose of it yourself?

Same objection.

A. No.

Q. Don't you know what becomes of the log after the voyage?

Same objection.

A. I don't know.

Q. Do you not know that it is handed to the officers of the company in Havre at the end of each voyage?

1116

Same objection.

A. I don't know.

Q. At the end of each voyage at Havre you sign the log, do you not?

Same objection.

A. I sign that every day.

Q. Beginning when she leaves Havre and ending when she arrives back at Havre?

Same objection.

A. Yes. 1117

Q. Don't you do anything with it after you have signed it the last time?

Same objection.

A. That is not my business.

Q. Who has charge of the log?

Same objection.

A. I don't know.

Q. You do not know who has charge of the log on board *La Champagne?*

Same objection.

1118

A. No, it isn't only those things that I know nothing about; there are bundles so high (indicating) relating to the voyage, that I know nothing about; and I sign them all.

Q. Has there been, at any time to your knowledge, any change made in the regulation which I exhibited to you, Claimants' Ex. 1 for identification?

Same objection.

A. No.

Q. When first was a copy of the regulation "Service a bord" furnished to you?

Same objection. 1119

A. When I began to command ships.

Q. The ships of the company?

Same objection.

A. Yes.

Q. You have said that you were in the Navy at one time. What was your rank?

Same objection.

A. Lieutenant of vessels.

1120 Q. Does that rank put you in command of vessels?

Same objection.

A. Yes.

Q. Is there any regulation in the French Navy as to the speed at which vessels must navigate in a fog?

Same objection.

A. I refuse to answer.

Q. Why do you refuse to answer that?

Same objection.

1121 A. Because each officer gives the order which he wishes in order to conform to the regulations.

Q. Conform to what regulations?

Same objection.

A. The International Rules that prevent collisions at sea.

Q. Do you understand that the International Regulations govern the vessels of the Navy?

Same objection.

A. No, we simply have the International Regulations.

1122 Examination of the witness is adjourned to a time to be fixed after the testimony is written out. The questions which the witness has refused to answer are to be submitted to the Court for its ruling at a time to be agreed upon.

DECEMBER 14, 1900.

Mr. Benedict, Mr. Murray and Mr. Jones being before me, Mr. Benedict asked that the time be fixed to continue depositions of the witness Emanuel Fajolle and suggested December 18th at which time the witness would be present in the city.

Mr. Jones objected upon the ground that a mo- 1123
tion had been argued and submitted to Judge Brown in reference to the taking of the testimony.

The Commissioner appointed December 18th, at 2 P. M., as the time at which the taking of such testimony would be resumed.

Mr. Jones thereupon stated that he gave notice that the witness would not be produced.

DECEMBER 18, 1900.

Present—Mr. BENEDICT and Mr. MURRAY,

who remained until 2.45 P. M.

Neither Mr. Jones nor the witness appeared. 1124

Adjourned to December 19th at 2 P. M.

DECEMBER 19, 1900.

Present—Mr. BENEDICT and Mr. MURRAY, for Claimants;
Mr. JONES, for Petitioner;
The witness not present.

Mr. Jones after examining the minutes made by the Commissioner of December 14th, states that the witness would not attend and thereupon requested that the minutes be amended to show that his statement was "that the witness would not be produced." 1125

The Commissioner states that he has so amended the record.

Mr. Jones further states that the reason he gave notice that the witness would not be produced was because he was then under the impression that there was a stipulation to that effect, by which under the circumstances he would not consent to be bound, upon enquiry and examination of the record he finds that there was no such stipulation.

Mr. Benedict moves to strike out the statement of Mr. Jones as no part of the deposition.

1126 At 2.37 P. M. the witness is not in attendance and has not presented himself.

On motion, the further taking of the deposition is adjourned to a time to be hereafter fixed by the Commissioner on notice by either party to the other.

The Commissioner here states that he omitted in his record of proceedings of December 18th to state that Mr. Jones inquired over the telephone, while Mr. Benedict and Mr. Murray were before him, whether those gentlemen were present, and whether the witness was in attendance.

1127

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

1128

On the proceedings in this cause and the affidavits and order hereto annexed, let said witness Emanuel Fajolle show cause before me at Chambers of this Court at the Post Office Building, in the City of New York, on the 15th day of January, 1901, at two o'clock P. M. on that date, or as soon thereafter as counsel can be heard, why an attachment should not issue against him for contempt in

failing to appear before Commissioner Thomas 1129
Alexander, to complete his deposition as a witness herein, which was begun before said Commissioner.

December 22, 1900.

(Signed) ADDISON BROWN.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for Limitation of Liability.

1130

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, deposes and says: That after the making of the order of this Court, on the 19th of December, inst., which 1131
order is hereto annexed, returnable on the 20th of December, 1900, at 10.30 A. M., deponent gave the said order with the affidavit on which the same was founded, and a copy thereof, to the Marshal of this Court, with instructions to serve it upon the witness Emanuel Fajolle. On the morning of December 20th the Marshal made the return on the back of said papers which appears there, and stated to deponent that he had had an officer searching for said Emanuel Fajolle until 11 o'clock of the 19th inst., and from 6 o'clock of the 20th, who had not

1132 been able to find him. Deponent further says that on the 19th of December, in the afternoon, a copy of the said affidavit and order was served upon E. K. Jones, Esq., the said copy order, however, by mistake stating that the same was returnable at 10 o'clock in the morning, instead of 10.30 A. M.

That deponent appeared before the Court a few minutes after ten o'clock, on the 20th. That said E. K. Jones and Frederick Kopf also appeared. That Mr. Jones stated that they did not appear on behalf of the said witness Emanuel Fajolle. That thereupon deponent stated to the Court that the order had not been served on the witness, and re-

1133 quested that another time might be fixed for the order to show cause. That, after the departure of said Jones and Kopf, deponent applied to the Judge to change the time of the return of said order until three o'clock P. M. And thereupon the Judge changed the order, so as to make it returnable at one o'clock P. M., of Thursday, the service to be made on or before half-past twelve and changed the date of the order to the 20th of December.

That deponent took the changed order again to the Marshal and instructed him to endeavor again to make service of the same on said witness. That the Marshal thereafter made the second return which appears upon said papers.

1134 And deponent further says that he has reason to believe, and does believe, that the said witness was warned by the said counsel, or one of them, or by instructions from them, to avoid service of such papers upon him, and that the witness followed such instructions, which was the reason why the Marshal was not able to serve the same upon him.

Deponent further says that the steamer *La Champagne*, of which said Fajolle is master, sailed from the Port of New York on the 20th of December, and that she is, by the published advertisements of

the Line, due to sail from here on the 17th of January, 1901, and will, therefore, return on or about January 12th. 1135

ROBERT D. BENEDICT.

Sworn to before me this 22d day of December, 1900.

(Signed) WM. D. JONES,
U. S. Commr.,
S. D. of N. Y.

[SEAL.]

UNITED STATES DISTRICT COURT,

1136

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

1137

On the proceedings in this cause, and the affidavit hereto annexed, let the said witness Emanuel Fajolle, show cause before me at Chambers at one o'clock P. M., on the 20th day of December, 1900, why an attachment should not issue against him for contempt in failing to appear before the Commissioner to complete his deposition as a witness herein. Service hereof to be made this day by 12.30 P. M.

December 20, 1900.

(Signed) ADDISON BROWN.

1138 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for Limitation of Li-
1139 ability.

Southern District of New York, ss.:

ROBERT D. BENEDICT, being duly sworn, says that he is one of the proctors of George Deslions, one of the claimants in this proceeding.

That on or about the twenty-third day of July, 1900, notice was given to the proctor for petitioner of the taking of the deposition of Emanuel Fajolle, as a witness in this cause. That said Fajolle was duly served with a subpœna to appear before said Commissioner at that time, and to produce certain
1140 books and documents referred to in the subpœna served upon him.

That said Fajolle appeared before the Commissioner, and was by a representative from the office of Jones & Govin, petitioner's proctors, advised to decline to take the oath and be examined, and he refused to take the oath and be sworn. And that thereupon an order was obtained from the Court that he should show cause why he should not be attached for contempt, which order was duly served.

That thereupon he appeared by the same counsel 1141
on the return of said order, and the Court ordered that the witness should be sworn and be examined. That thereupon the witness was sworn, and the examination proceeded. That in the course of such examination the witness, by the advice of the same counsel, refused to answer certain questions. That thereupon the examination of said witness was adjourned to a time to be fixed, after the testimony, which had been taken by a stenographer, should have been written out, and the matter whether the witness should answer the questions which he had refused to answer should be submitted to the Court.

That thereafter that matter was submitted to the 1142
Court, and the Court decided that the witness should answer such questions. That thereupon, on the 14th of December, inst., deponent and the said counsel for the witness and of the petitioner, being before the Commissioner, deponent requested the Commissioner to fix a time for proceeding with such deposition, informing the Commissioner that the said witness, who was captain of the steamer *La Champagne*, would be in New York, in command of said vessel, on the 18th of December.

That thereupon the Commissioner fixed the 18th of December at 2 P. M. for proceeding with such deposition. When said Commissioner had fixed 1143
such date, said counsel for petitioner and the witness stated that he informed the parties that the witness would not be produced at that time.

That on the 18th of December, at 2 o'clock, deponent attended before said Commissioner, and waited until nearly 3 o'clock, but said witness did not attend. Whereupon, at the request of deponent, the Commissioner further adjourned the examination to the 19th inst, at 2 o'clock. And thereupon deponent wrote to the said counsel for petitioner and for the witness the following letter:

1144 *"La Bourgogne."*

DECEMBER 18, 1900.

E. K. JONES, Esq.,

Proctor for Petitioner.

SIR:—In view of the fact that you did not attend before the Commissioner, nor produce Captain Fajolle, the witness, this afternoon, at two o'clock, the time to which such examination until to-morrow at two o'clock P. M., and we give you notice that if the witness is not produced, and does not attend at that time, we shall be compelled to move for an attachment against him.

Yours truly,

1145 BENEDICT & BENEDICT,

Proctors for Deslions.

And deponent has attended before said Commissioner on this 19th day of December, at two o'clock, and has waited before said commissioner until thirty-seven minutes past two, but that said witness has not appeared.

ROBERT D. BENEDICT.

Sworn to before me this 19th day of December, 1900.

THOS. ALEXANDER,

U. S. Com.

1146

UNITED STATES DISTRICT COURT, 1147

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability. 1148

An order having heretofore been made, requiring Emanuel Fajolle, a witness under examination before the Commissioner in this matter, to show cause why an attachment should not be issued against him for contempt, in failing to appear on such examination, and the said order being returnable this 15th day of January, 1901, at 2 P. M., but not having been served upon the witness, and the witness now voluntarily appearing and expressing his willingness to continue the examination before the Commissioner under the original subpœna, it is now

Ordered that such examination proceed forthwith 1149 before said Commissioner and that on said witness so appearing before the Commissioner and submitting himself to further examination, the said order to show cause be, and the same hereby is discharged.

Jan. 15th, 1901.

ADDISON BROWN.

Copy of the above order rec'd Jany. 16, 1901.

JONES & GOVIN,

Prcs. for Petr.

1150 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the Steamship "LA BOURGOGNE," for limita-
1151 tion of liability and other relief.

EXAMINATION OF EMANUEL FAJOLLE, master of the steamship *La Champagne,* continued, before Thomas J. Alexander, United States Commissioner, at the Post Office Building, New York City, on the 15th day of January, 1901.

Present—THE COMMISSIONER;
MESSRS. JONES & GOVIN (Mr. Jones) for petitioner;
MESSRS. BENEDICT & BENEDICT (Mr. R. D. Bene-
1152 dict) for claimants.

The Commissioner administers the oath to the interpreter.

EXAMINATION OF EMANUEL FAJOLLE CONTINUED, through an interpreter:

By Mr. Benedict:

Q. Your examination in this case has been begun and partly concluded, has it not? A. I was examined once.

Q. You were subpœnaed in July last to produce 1153
the logbook of *La Champagne?* A. Yes.

Q. Have you that log here present? A. No, sir.

Q. Why have you not produced the log in obedience to the subpœna? A. The last time that I was interrogated I brought the logbook here.

Q. Yes, but why have you not brought it now? A. Because I have not the subpœna in hand; I do not recollect the details of it.

Q. What has become of the original subpœna that was served, the first one? A. I don't know where it is.

Q. Were you not informed by your counsel that you were subpœnaed to produce the log and that 1154
you were to produce it at this time? A. I was informed by Mr. Jones that I should present myself here at four o'clock.

Q. Was that all the information you got? A. I don't recollect any other information.

Mr. Benedict: Mr. Commissioner, I ask you to notify the witness that under the original subpœna that was served upon him he was required to produce the log of that voyage, and that that subpœna he is still called upon to obey at the next hearing.

Mr. Jones: That is a judicial question, and I don't think the Commissioner can pass upon it.

The Commissioner: I haven't the subpœna be 1155
fore me.

Mr. Benedict: I know that, but we both agree about that, that that subpœna called upon the witness to produce that log at that time.

The Commissioner: I don't think that I can give any such instructions without the subpœna before me.

Mr. Benedict (to the witness): I will send to Mr. Jones, your counsel, for you, a copy of the subpœna, the original of which was served on you

1156 in July, and I want you to understand that when the adjourned examination goes on I shall require you to produce at that examination what the original paper called upon you to produce.

The Witness: I don't know what I did with the original.

Mr. Benedict: I will send another copy of the subpœna to you.

Adjourned to Wednesday, February 13th, at two P. M.

OFFICE OF COMMISSIONER ALEXANDER,

1157

NEW YORK, February 13, 1901.

Present—THE COMMISSIONER;
MR. JONES for petitioner;
MR. BENEDICT for claimants.

EMANUEL FAJOLLE, examination resumed, through Capt. Stetson, interpreter:

By Mr. Benedict:

Q. Have you brought the logs and instruction books which you were by the original subpœna sub-
1158 pœnaed to bring? A. No.

Q. Why not? A. Because when I finished my voyage in July I turned over those documents to the company in Havre, according to orders.

Q. To whom did you turn them over? A. To the agents in Havre.

Q. Have you made any effort to obtain them since the last adjournment? A. I had no effort to make; I only had to execute the orders of the Court.

Q. My question was, did you make any effort to obtain them since the last adjournment in order to bring them here? A. I had no effort to make. The

company gives me orders to hand over these docu- 1159
ments at the end of each voyage, and I did so in this case, and I have no orders to give to the company on that subject.

Q. You haven't answered my question. Did you make any effort to obtain them since the last adjournment in order to bring them here? A. I can say nothing except what I have already said.

Q. You haven't answered the question at all. The question is whether you have made any effort at all to get those books. That is to be answered either yes or no? A. I have not.

Q. Did you receive a letter from me just before you left the port of New York in January last? A. 1160
I did; at the same time that I received some official paper.

Q. Which was included in the letter? A. Yes.

Q. Did you read the letter? A. Yes.

Q. Did you take that letter with you to Havre? A. Yes.

Q. Did you exhibit that letter to any person at the agency, to the agency at Havre? A. No; it was a personal letter to myself.

Q. Have you that letter here? A. I have; I produce it.

Q. Did you understand the last paragraph of that letter? A. Yes. 1161

Q. Why did you not bring the situation spoken of in that letter to the attention of the company?

Counsel for the petitioner states that the witness is not called upon to answer that question and he may answer or not at his option.

Mr. Benedict: Mr. Jones, you will please remember that the Court has decided that you have no right to instruct the witness.

The Witness: I wish to know what my attorney says.

Mr. Jones: You may answer if you like.

1162 A. I didn't bring that letter to the attention of the company because it was not written in it that I should call the attention of the company to it. Furthermore, I think if Mr. Benedict wished to have documents belonging to the company he would have done better to have written directly to the company, because I am only one of its servants.

Q. You knew, did you not, by that letter that if the logs were not produced at this hearing, an application would be made to punish you by the Court for disobedience to the subpœna and the order of the Court? A. In the letter which I received I see there is a mention of punishment for disobeying
1163 the Court, but in that letter Mr. Benedict says that that is his opinion. But I didn't suppose that I was disobeying the Court because I didn't follow literally the opinion of Mr. Benedict.

Q. You understood, did you not, that the letter stated that the Court had decided that the logs must be produced? A. Yes.

Q. If you understood then that the Court had decided that those logs must be produced, why did you not endeavor to procure them that you could produce them? A. Because that letter is not an order of the Court.

Q. Did you have any doubt of the fact that the
1164 Court had so decided? A. I am not an American; I don't know anything about the matter.

Q. Did you make any inquiry of the counsel here present in reference to that matter, as to whether the Court had so decided? A. I don't recollect that I did; no, I did not.

Q. Have you the copy of the subpœna that was sent to you with that letter? A. I have; and produce it.

Q. Have you read this subpœna? A. It is difficult to read because it isn't very well written, but I think I have understood it.

Q. Did you not understand from reading that 1165
that there was a command of the Court that you should produce the logbooks of the *Champagne?* A. I don't understand anything about documents of that sort.

It is agreed that a copy of the letter and subpœna may be attached to this deposition in place of the originals. The letter is as follows:

"LAW OFFICES OF
BENEDICT & BENEDICT,
68 Wall Street.

NEW YORK, January 15, 1901.

1166

"Capt. EMANUEL FAJOLLE,

SIR:

I enclose to you, as I told you I would, a copy of the subpœna which was served upon you on the 23d of July last, by which you will see that you were required to bring with you a copy of the Service a Bord and the log books of the *Champagne*, both the deck logbook and that of the engine room, which were then in your possession and under your control.

You will remember that, although you brought those log books with you to the examination, you declined, under the instructions of counsel, to produce them. 1167

I therefore notify you specifically that the Court has since decided that those logs must be produced, and that you are, therefore, required, in accordance with the subpœna, to produce those logs at your examination, on the 13th of February next, to which time your examination has been adjourned. And you must also understand that, in case you should not produce those logs at that time,

1168 you will, in my opinion, be liable to be punished by the Court for disobedience to the subpœna and order of the Court.

I can hardly believe that, if this situation is brought to the attention of the Compagnie Generale Transatlantique, the Compagnie will put any obstacle in the way of your bringing those logs here to be produced by you at that time.

I remain,
Yours obedient servant,
R. D. BENEDICT."

1169 The copy subpœna referred to is as follows:

"Subp—Duces Tecum.

THE PRESIDENT OF THE UNITED STATES OF AMERICA, TO CAPT. FAJOLLE of S. S. LA CHAMPAGNE, GREETING:

We command you, that all business and excuses being laid aside, you appear and attend before Thomas Alexander, U. S. Commissioner for the Southern District of New York, at his office in the United States Court and Post Office Building, in the City of New York, on the 24th day of July, at 12 o'clock
1170 in the noon, to testify and give evidence in a certain matter now pending undetermined in the said Court In the matter of the Petition of La Compagnie Generale Transatlantique, owner of the steamship *La Bourgogne*, for Limitation of Liability, on the part of the claimants and that you bring with you and produce at the time and place aforesaid a certain book of instructions furnished to you by the Compagnie Generale Transatlantique, and entitled 'Service a Bord des Paquebots,' and that you *also bring with you*

all logbooks of the steamship 'La Champagne,' whether logs of the deck or logs of the engine room, in your possession or under your control, now in your custody, and all other deeds, evidences and writings which you have in your custody or power concerning the premsises. And for a failure to attend, you will be deemed guilty of contempt of Court, and liable to pay all losses and damages sustained thereby to the party aggrieved and forfeit two hundred and fifty dollars in addition thereto. 1171

Witness, the Honorable ADDISON BROWN, Judge of the District Court of the United States for the Southern District of New York, the 20th day of July in the year of our Lord one thousand nine hundred. 1172

(Sd) S. H. LYMAN, Clerk.

BENEDICT & BENEDICT,
Proctors,
68 Wall St."

(Endorsed)—"United States District Court, In the matter of the Petition of Compagnie Generale Transatlantique for Limitation of Liability.—Copy Subpœna—Duces Tecum. Benedict & Benedict, Proctors, 68 Wall St.—"I hereby certify that on the 23d day of July, 1900, at the City of New York, in my district, I personally served within Subp. Duces Tecum upon the within named Witness Captain Fajolle of the Steamship *La Champagne* by exhibiting to him the within original and at the same time leaving with him a copy thereof. At same time and place I delivered to him $1.60 witness fee & mile- 1173

1174 age. (Sd) Wm. Harkle, United States Marshal, Southern District of N. Y. Dated July 24, 1900."

Q. But you have just said, have you not, that you read the document? A. I have read it, but I am obliged to obey the orders of my company.

Q. Are you not obliged to obey the orders of the Court when you are here? A. My first duty is to get my living, and if I didn't obey the orders of my company I would be discharged.

Q. Have you any orders from the company not to produce the books which by the subpœna you were
1175 required to produce? A. I have orders from the company to turn over my logs when I arrive.

Q. (Repeated.) You haven't answered my question.

Counsel for the petitioner requests that this examination be suspended and the record certified to the Court to decide whether this line of examination shall be continued. The fact is plain that the witness was here in July last; that he then had the logbooks; that the examination was suspended; that he resumed his voyage, of course took his logbooks with him, and under the rule of the company turned them
1176 over at Havre. It is admitted that he received this letter from Mr. Benedict, that he received a copy of the subpœna, and he says he has not got the logbooks. Why should we be compelled to sit here and go into the why and wherefore that doesn't add or take anything at all away from the situation? He hasn't got the books here, so it is simply a legal question for the Judge to decide whether or not he is guilty of any disobedience of the order of the Court.

The Commissioner: What do you want, Mr. Bene- 1177
dict?

Mr. Benedict: I want the question answered.

The Commissioner: I think Mr. Benedict is entitled either to an answer or to a declination of the witness to answer the question.

Mr. Jones: When I make an objection I am entitled to have the question certified to the Court.

The Commissioner: I have doubts as to that; but still the Court is here and you are at liberty to go in before him.

Mr. Benedict: I object to sending it to the Judge. I want my question answered.

The Commissioner: If there is objection raised to 1178
a question here upon which a ruling is requested, I direct that the matter be taken before the Judge forthwith.

Counsel thereupon go before the Court.

The Court: What is the ground of the objection?

Mr. Jones: The ground of the objection is that the legal situation, both as to law and fact, is entirely complete; any further examination of this witness is entirely immaterial. The witness has had a copy of the subpœna delivered to him; has admitted service of it, and said he understood it; has testified that in the ordinary course, according to the rule of the company when he has resumed his 1179
voyage, has turned his books over to the Havre agency as he was required to do. He simply has not done as Mr. Benedict wishes him to do. The situation is complete and any further examination of why and wherefore and how he didn't do it and whether he deliberated is entirely immaterial.

The Court: It doesn't seem to me that that answers the whole question. Here he was required to produce a certain log which he did have at one time; and then the question arose whether he should produce it and the Court decided that that log

should be produced at his examination, as is stated by this letter, at the adjourned time. As I understand it now, having gone to Europe in the meantime, he has left the logs there?

Mr. Jones: Yes, sir. Of course, your Honor will see that these are official books, part of the Postal Service of France; they had to go back. No request was made of the witness to leave them; the Commissioner gave no direction to leave them; he resumed his voyage and they went in their ordinary course to the Havre Agency.

The Court: But the Court was not through with them. They were here and he was required to produce them; and then he wasn't examined about them because you objected. And while the Court was deciding about it he takes them to France and leaves them. Isn't that it?

Mr. Jones: That is it, in substance. But your Honor will understand that this is in accordance with the requirements of the company. These are not the witness's books.

The Court: The effect of the question is whether he was acting under restraint or not.

Mr. Jones: No; he has already covered that ground. He is temporarily in each voyage in possession of official documents which he is bound, unless prevented by physical force or the order of the Court, to use in the service of his company.

The Court: I don't think it is fully covered. I think he ought to answer this question. There is a great deal of difficulty in getting the direction of the Court complied with. There is a direction for the production of certain books, and in one way or another the thing is postponed and postponed, and defeated and defeated, under one argument and another argument, so that no progress is made. If the Court decided that that log should be examined, then there is no reason why it shouldn't be. I can't

understand your proceeding here. While you are 1183
contumacious, it doesn't make much difference whether it is your captain or your company. If you are contumacious I must dismiss the proceeding.

Mr. Jones: I hope your Honor will not take such a view as that. There is the most general submission on the part of the company, and I have been merely respectfully submitting the questions to the court on behalf of my client. I have the most abundant instructions to submit to all the orders of the Court. It is simply a question of law as to whether this witness, the temporary custodian of these books for that voyage, is to be held to an account for not bringing those books back. 1184

The Court: He had those books here; now he has taken them back and left them while the matter is still *sub judice.*

Mr. Jones: How long is he under the stress of a subpœna?

The Court: I suppose until the examination is finished.

Mr. Jones: Strictly speaking, he was entitled to a witness fee. He was examined *de bene esse* last summer; has had his examination adjourned from time to time until he has been here three times.

Mr. Benedict: I cannot imagine, if there is this entire obedience on the part of the company, why 1185
the company should not have at once, as soon as they understood from my friend on the other side what the situation was, have sent them over to be examined.

Mr. Jones: There is no difficulty about Mr. Benedict issuing a commission and examining the company as to the books in its possession.

The Court: I don't think anything of that kind is proper. Here you are maintaining a legal proceeding in this court. You are certainly bound to produce here all such books and records as may be

1186 brought here with reasonable convenience. It would be very inconvenient, and I don't think it would be proper at all for the Court to require either side to go to France to consult books, documents and papers which they can send here every week in the year.

Mr. Jones: I want to raise that question squarely as a question of law, as to whether or not these witnesses are compelled to obey subpœnas of this kind.

The Court: If the servant of the company has them here I have held hitherto that it is proper to subpœna him to produce them. The litigant party
1187 here in question, if any of your officers were here, it would be perfectly proper for an order to be made for you to produce these books for inspection without a subpœna. If you have got the captain, or whoever it may be—any officer that has any books in his possession that are pertinent and material then they should be produced by him, and an ordinary subpœna is sufficient.

Mr. Jones: That is the exact point. This is the log book of the steamship *La Champagne* for a voyage in July, 1900, two years after the accident to the *Bourgogne*—the log book of another vessel—and —I don't ask your Honor to consider it now, but
1188 when this question comes before your Honor in the regular way, that will be the very first question to be raised, whether that log book is pertinent and material.

This was no officer of *La Bourgogne*. The logbook was not even contemporaneous by two years with anything that happened to the *Bourgogne*. There are logbooks on the voyage now that would be as pertinent, according to my idea.

Mr. Benedict: We haven't called on you to produce them; we have called upon you to produce these.

The Court: The logbooks of the *Bourgogne* are at 1189
the bottom of the ocean, aren't they?

Mr. Jones: Yes, sir; they are lost.

The Court: I suppose, Mr. Benedict, you want the logbooks here to examine them?

Mr. Benedict: Certainly.

The Court: What do you propose about that, Mr. Jones?

Mr. Jones: I propose that Mr. Benedict should bring this formally before the Court upon a motion to punish this witness for contempt, and that we discuss this legal question as to whether or not he, as a witness, is required to produce these books.

The Court: I don't think that could bring up the 1190
question. He can't determine whether they are material or not.

Mr. Jones: On a motion to punish for contempt we shall have to determine the very first thing, whether that evidence is material.

The Court: No. This letter here states that that has already been determined, that he was ordered to produce the books, doesn't it?

Mr. Benedict: Yes, that is the fact.

Mr. Jones: As a matter of fact, there is no order to that effect.

Mr. Benedict: There is a decision; it is the same thing.

Mr. Jones: I assume that your Honor, when that 1191
question was presented to you on a motion affecting another witness, intended your meaning to extend to all the other witnesses; but I do wish, when the time comes, that your Honor will very seriously consider the argument that I will produce to show that those documents are in the first place absolutely immaterial, and, in the second place, they are not such documents as the witness can be called upon to produce.

The Court: Either the witness or the company;

1192 the witness, if he has them; if he hasn't, the company.

Mr. Jones: I am perfectly willing to submit to any order that your Honor may make with respect to this company. But Mr. Benedict has been examining this witness *de bene esse* and he is in an embarrassing position—only the temporary custodian; it is very doubtful whether they are under his control in the legal sense. Mr. Benedict didn't say a word about wanting these logbooks.

The Court: I think he should answer this question. The question is, as I understand it, whether he left those books there under any special instruc-
1193 tions?

Mr. Benedict: Whether he has any orders from the company not to produce these particular books on this examination.

The Court: I think he should answer that question.

Mr. Jones: I do hope that we can get to a period in the examination of this witness when Mr. Benedict will consider that he has material enough to bring this matter before the Court on a motion to punish the witness for contempt. That is the question I should like to have determined. There is no refractory disposition on the part of this witness, no contumacy on the part of the company. If your
1194 Honor, on the presentation of this question as to whether the company itself shall produce these books, makes an order that they should produce them, they will be sent over here. My point is that this witness, the captain of another steamer, an utter stranger to the *Bourgogne*, a man who just has a few papers pass through his hands, comes here —then he says, in another part of his deposition, that he has turned them over under a general order which requires him at the end of each voyage to deposit the logbook with the agency at Havre.

The Court: I must assume, for the purposes of 1195
this precise question, that there was probable ground for the examination of these books. That being so, it is only one of two modes that is to be pursued to get them; either by order upon the party to produce them, or by subpœnaing the particular person, servant of the company, who has them in possession. I think that either is proper, according to circumstances. It would seem to be a very needless way to obtain papers that are right here under the jurisdiction of the Court, to make an order on a company in France to send there for them to send the books here.

Mr. Jones: Your Honor will indulge me on that 1196
point. The point of this examination, that has been stated over and over again, is to impute knowledge to the company. Now the way to find out whether the company has knowledge is to examine an officer of the company who has possession of this book: Where did you see it? How did it come into your possession? Under what circumstances did you examine it, if you examined it at all? That is the way to make this inquiry, and that is the inquiry that I am fully prepared to meet. It is not by the examination of these witnesses, these men who make a voyage two years after this disaster. So that it is very important, when a document of this kind is 1197
produced, that the party to be affected by it shall have an opportunity to state what he knows about his document; that it is his book. And that is the difference, so far as my company is concerned, between getting these logbooks in one way rather than another. I submit to your Honor that that is a very material difference. It is my company that is to be affected by whatever may be in this logbook, and they are entitled to be examined themselves as to their own books.

The Court: Nothing prevents your examining

them. Nothing prevents your calling them, if needful.

Mr. Jones: It is for the other side to examine them in a right and proper and legal way.

The Court: I think it is proper to examine the books. That doesn't necessarily imply the examination of a person. You have several officers who might very naturally be examined by you in reference to these books I suppose. I don't know just who the persons would be.

Mr. Jones: I haven't any idea who I can examine.

The Court: I can't tell certainly certainly who it might be; it might be two or three; I can't tell; I don't know anything about the ultimate bearing of this examination.

Mr. Jones: That is what I want to bring before your Honor. I hope we can have an end to this thing now.

The Court: That is what you can't tell always beforehand.

Mr. Jones: If Mr. Benedict makes a motion to punish this witness that question will come up; we shall have it determined and ended forever.

Mr. Benedict: I shall have to conduct this in my own way.

The Court: The question practically here is as to the reason that the books have not been produced here that were left in Havre, whether it was upon any order of the company.

Mr. Jones: Will your Honor think about that a moment. On the examination of this witness what earthly difference does it make?

The Court: Because he hasn't done what the subpœna required him to do.

Mr. Jones: I respectfully submit that he did. He brought the book here. Mr. Benedict adjourns the examination for three months; the witness goes away; the books are not impaled here; they passed

out of his possession. He is not, under a subpœna, 1201
required to go and get something that has passed out of his possession.

The Court: I think he should answer that. That must be my decision on that.

Mr. Jones: I am very sorry that I have to make so many applications to your Honor; but I hope some time soon I shall be able to dispose of that question. A logbook of the *Champagne,* in July, 1900, to affect an accident to the steamship *Bourgogne* in June, 1898, two years before! If there is any stretch of the imagination——

The Court: The next one may be the examination of the logbook of a vessel two years before. Sup- 1202
pose that was so. Then to carry it to a very extreme case, suppose the logs were examined of every voyage of every vessel since that the company has sent. That would be, of course, a very extreme supposition. But upon the point that you have suggested to me as the possible bearing of the examination, I can conceive that that would be the extreme result of this kind of examination, if it were actually necessary. I don't say anything about the power of the Court to interpose to refuse to continue the examination to such an extent; but so far as the point involved is concerned, that would all be in line, wouldn't it, with the point that you have 1203
suggested, viz., the knowledge of the company as to certain modes of navigation?

Mr. Jones: No, sir. As to contemporaneous knowledge of what the company might have done in 1898, what they did in 1900 is no proof.

The Court: It isn't mathematically demonstrated; but it might make a supposition; it would make an extremely strong moral probability.

Mr. Jones: Your Honor would want to deduct your inference from probabilities?

The Court: I have to do that all the time, and act

upon much less than a strong moral probability—a probability; I have constantly to act, one way or the other, on probabilities; I can't avoid it.

I think the general idea that leads to this examination is right, and I think, therefore, that any servant of the company who has its books bearing on the question is lawfully required to bring them by subpœna. My opinion is adverse to you on that point. I think an order of the Court as to books would be perfectly within the power of the Court to grant, and I think that would really be the best way of getting at much of this kind of testimony. If much of it is wanted, that would be the proper way to get at it.

Mr. Jones: That order will be obeyed to the letter.

The Court: Nevertheless it doesn't require that that alone should be resorted to. If the man is here who is using the books, I think that is the most proper way to examine that particular book.

Mr. Jones: We have no books here.

The Court: He did have them. This is only the continuation of a proceeding begun by subpœna; and when he produced them you immediately objected to any examination and you came before me and there were several motions before me, which deferred the matter so that the object of the subpœna was never fulfilled, and the matter was continued by these arguments and has never been finished yet, and, as I understand, you are now here really in a continuation of the hearing upon that original examination. But in the meantime the book is now absent. That is an incident of the lapse of time; and this inquiry is to see how it comes that it isn't here.

Mr. Jones: He has already stated that.

The Court: In a certain general way. This is only asking an additional question, whether it was done by a particular order having reference to this

proceeding, or whether he left it under some sup- 1207
posed obligation that rested upon him in the ordinary course of business without any particular intention. Either one of those things I think would be appropriate, having reference to his own conduct under the subpœna. Any question of that kind ought not to take a great while, if he answers directly and fully. I think that is right.

OFFICE OF COMMISSIONER ALEXANDER.

EXAMINATION OF CAPT. FAJOLLE CONTINUED:

Q. (Repeated.) Have you any orders from the company not to produce the books which, by the subpœna, you were required to produce? A. The 1208
company has never given me any orders not to produce them.

Q. Have you any reason to give, if the company never gave you orders not to produce them, why you have not obeyed the subpœna of the Court which directed you to produce them at this examination? A. I have had no orders not to produce them, and I have had no orders to take them off from the ship. Those books are not my property.

Q. You did produce them, did you not, on the previous examination without any orders except the subpœna of the Court? A. Yes.

Q. Have you any reason to give then, when you 1209
were instructed by my letter that the Court had ordered the production of the books, why you did not produce them again as you did before? A. I haven't produced them because the first time that I brought them here I had no right to do so, and I consider that I have no right to dispose of the property of the company.

Q. Do you mean that you understand that when the mandate of the Court by subpœna is given to you to produce books, you are not in duty bound to produce them? A. That is not my idea.

1210 Q. (Repeated) I answered; I received a subpœna of the Court and produced the logbooks the first time. My duty as a commandant is not to allow those books to leave the ship. That is the reason I have not brought them.

Q. But they are not on the ship? A. I have my logbooks on board.

Q. Those books? A. No.

Q. (Repeated) Do you understand that when the mandate of the Court by subpœna is given to you to produce books, you are not in duty bound to produce them? A. I cannot dispose of logbooks which are not in my possession. They are not in
1211 my possession.

Q. My question will be repeated until you answer. Do you understand that when the mandate of the Court by subpœna is given to you to produce books, you are not in duty bound to produce them? A. I have no other answer to make.

Q. (Repeated) A. It is my duty to produce them if I have them in my possession; but I have them not in my possession.

Q. You took those logbooks that you had here away with you, did you not? A. Yes.

Q. And you left them, as I understand, in the office of the company? A. Yes.

Q. And do I understand that you have not, since
1212 receiving the letter and the copy of the subpœna here produced, asked anybody connected with the company for permission for those books in order that you might bring them back again? A. I showed the subpœna to the agency.

Q. Who was the agent? To whom, by name? A. I handed it in. I don't know who read it. I sent all the papers together, all the papers belonging to the ship; I sent them ashore all together to the agency.

Q. I understood you to say you delivered the sub- 1213
pœna to the agent? A. No; I gave him a copy of it.

Q. Of the subpœna? A. Yes, sir.

Q. To whom did you give it, by name? A. I put it into a box and it went away from the ship in a box directed to the agency. I don't know who received it.

Q. Did you ever make any inquiry about it afterwards? A. No.

Q. Did you never ask for the permission to bring the books back? A. No.

Q. Did you put in that box with the subpœna a copy of the letter which I had written you? A. Yes.

Q. Did you not understand that it was your duty, 1214
under this subpœna, to endeavor to bring those books back here for examination? A. No.

Q. If you had understood that the Court had ordered that those books should be produced here, would you have made an application to the company to allow you to bring them back here? A. I would have taken no more steps in that case than in the first case. After I have communicated, as I did, the matter to the company, it is for it to decide.

Q. For it to decide what? A. Decide whether it should give me the logbooks or not.

Q. So then, as you understand, the reason why you have not brought the books is because the com- 1215
pany has decided not to allow you to produce them, is that correct? A. No, no, no.

Q. Did you not say that it was for the company to decide whether they would produce them? A. I said that I gave copies of the papers in the case to the company, and it was their business to tell me what they wanted done, and not for me to ask of them what they wanted done.

Q. And they never told you anything as to what they wanted done; is that the fact? A. Nothing. I communicated the documents and I have waited

1216 further orders. Once more I wish to say that I am only a servitor of the company; I don't ask for orders; it is the company that gives me orders.

Mr. Benedict: I think we shall have to suspend this examination until I can bring this matter to the attention of the Court in some way.

CROSS-EXAMINED BY MR. JONES:

Q. What is the rule of the company under which you dispose of your logbooks at the end of each voyage?

Mr. Benedict: I want to ask in reference to that,
1217 first, whether it isn't a written rule? If so, it must be produced.

Q. You have stated in your examination here in answer to Mr. Benedict that you turned your logbooks at the end of your July voyage over to the company according to orders. State whether or not that is a regular order and whether or not it is in writing or a verbal order, or in print? A. We hand over our logbooks for a time which goes so far back that I hardly remember to know just how.

Q. To know whether it is in writing or verbal? A. I don't recollect.

1218 By Mr. Benedict:

Q. Is there not some order on that subject in the Service a Bord? A. I don't know it by heart and I can't say.

Mr. Benedict: If you will accept it now, I will give notice at the foot of this, to the witness, here present, that on the proceedings of this deposition I shall move for an attachment against him for contempt.

I give notice that on the deposition, as far as taken, I shall move the Court, on Tuesday, Febru-

ary 26th, at the opening thereof, or as soon there- 1219
after as counsel can be heard, for an attachment against him for contempt in not producing the log-books specified in the subpœna which were produced at the first hearing.

And I ask that the examination be adjourned.

Counsel for petitioner objects to any adjournment of this proceeding on the ground that the Commissioner has no poewr to adjourn an examination *de bene esse* of an away going witness.

The Commissioner states that, as notice has been given of an application to be made in this proceeding to the Court on the 26th day of February, and as 1220
he is informed that the witness is about to depart from the district not to return until the 10th of March, he adjourns the further taking of his deposition to the 11th of March, 1901, at 2 P. M.

APRIL 8, 1901.

Pursuant to adjournment.

Present—Messrs. MURRAY & BENEDICT.

The witness not being present is duly called by the Commissioner. On motion the further examination is adjourned to a day to be fixed.

1221

UNITED STATES OF AMERICA,
Southern District of New York, } ss.:

I, THOMAS ALEXANDER, a Commissioner duly appointed by the District Court of the United States, for the Southern District of New York,

Do hereby certify, that on the 24th day of July, 1900, and on subsequent days, I was attended by Messrs. Benedict and Benedict and A. Gordon Murray for claimants and Messrs. Jones & Govin for the Petitioner and by the Witness, who being of

1222 sound mind and lawful age, and the witness being by me first sworn to testify the truth, the whole truth and nothing but the truth, his testimony was taken by a stenographer in pursuance of a stipulation of the parties.

I further certify, that the reason for taking the foregoing deposition is that the witness is material and necessary in the cause in the caption of the said deposition named, and that he is about to go to a greater distance than one hundred miles from the place of trial of the proceedings, viz., to France.

I further certify, that due notification of the time and place of taking the said deposition was made
1223 out and served on the attorneys for the petitioner to be present at the taking of the deposition and to put interrogatories, if he or they might think fit.

And I do further certify, that I am not of Counsel nor Attorney for either of the parties in the said deposition and caption named, nor in any way interested in the event of the cause named in said caption.

In testimony whereof I have hereunto set my hand and seal this 7th day of October, in the year of our Lord one thousand nine hundred and one, and of the independence of the United States the one hundred and twenty-sixth.

(Signed) THOS. ALEXANDER,
1224 United States Commissioner,
Southern District of New York.

Deposition James William Nunan, taken de bene esse and offered in evidence as Respts. Exh. 18, Oct. 11/01. 1225

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF 1226

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for Limitation of Liability.

DEPOSITION of James William Nunan, taken this 16th day of August, pursuant to the annexed notice, at the office of Benedict & Benedict, 68 Wall Street.

Present—Mr. STEPHENS and Mr. KOPF, for Petitioner. 1227
Mr. BENEDICT and Mr. MURRAY, for Claimants.

Petitioner's counsel objects to the taking of this deposition on the ground that no answer has been filed by the claimants, and because the case is not in a condition to take testimony until after the return day of the monition.

1228 JAMES WILLIAM NUNAN, being duly sworn, testifies as follows:

EXAMINATION BY MR. BENEDICT:

Q. What is your business, Capt. Nunan? A. A master mariner.

Q. How long have you followed the sea, sir? A. Well, I am forty-four years now.

Q. Forty-four years at sea? A. Yes.

Q. How old are you, captain? A. Fifty-nine.

Q. What ship are you master of? A. The *Laurentian*.

Q. Of what line? A. Allan Line.

1229 Q. Allan State Line? A. Yes, sir.

Q. And are you going to leave the port of New York? A. On Saturday.

Q. Bound for where? A. Glasgow.

Q. On July 4th, 1898, what ship were you master of? The *Grecian*.

Q. Of the same line? A. The Allan State Line.

Q. Now whereabouts, and in what sea was she, the 4th of July? A. We were outward bound from Glasgow to New York.

Q. Did you at that time discover, that day, the ship *Cromartyshire?* A. Yes.

Q. Whereabouts did you find her, as accurately
1230 as you can give it? A. Somewhere about sixty miles south of Sable Island, as near as I can remember. Of course I haven't my books with me.

Q. What time? A. Half-past two in the afternoon.

Q. When you sighted her or came up? A. Came up to her.

Q. What was the weather on that day? A. Well, it was moderate and fine, a little hazy at that time.

Q. What was the condition of the *Cromartyshire* when you found her?

Objected to.

A. The condition—you could see that her yards 1231
were untrimmed and such, and of course we steered for her. She had the signal N C, I think it was, something of that kind.

Q. What does that mean? A. "In distress."

Q. As you came up close what did you find? A. I could see that there were a crowd of people on board, and several boats alongside of her.

Mr. Stephens: Same objection applies to all questions after the first, as immaterial.

Mr. Benedict: Q. And did you go aboard of her? A. Well, the master sent the second officer alongside.

1232

Q. Master of the *Cromartyshire?* A. Yes; asking me if I would take the people, saying that they had been in collision.

Q. With what steamer, did he say? A. He mentioned the name of the steamer.

Q. What was it? A. *La Bourgogne*, I think it was; asking me if I would take the people; so I went on baord and returned with the boats.

Mr. Stephens: Q. What people? A. The passengers that were on board the *Cromartyshire*.

Q. *Bourgogne* passengers? A. Passengers and crew, they were on board of her to the number of 165.

1233

By Mr. Benedict: Q. Those were the men that he wanted you to take? A. Yes; he wanted me to take all the people on board.

Q. Did you do it? A. I went on board, and of course after talking with him, I agreed to take the people, and then he asked me if I would tow him to Halifax, so I said Yes, I would.

Q. And as a matter of fact you did tow him? A. I did tow him.

Q. How did you make fast? A. We had a ninety fathom steel wire hawser and she had a ninety

1234 fathom steel hawser, and we connected the two hawsers in one.

Q. Over your stern to his bow? A. Yes.

Q. One hawser. You were separated from him by the length of two ninety fathom hawsers? A. Yes; with the exception of what it took to make it fast.

Q. What time did you start to tow the *Cromartyshire* to Halifax? A. About half-past six in the afternoon.

Q. Of July 4th? A. Yes.

Q. What time did you arrive at Halifax, with the *Cromartyshire?* A. On the 6th, and it was about ten or half-past nine in the morning I entered Hali-
1235 fax harbor.

Q. During that trip of thirty-six hours or so did you encounter any fog? A. Yes; considerable fog.

Q. How much of a fog did you encounter, how long did it last?

Mr. Stephens: I object. It is entirely immaterial to show the condition of the atmosphere on the 4th of July.

A. Of course I couldn't tell without the aid of the logbook; several hours.

Q. During that fog did the *Cromartyshire* blow her horn? A. Yes; during that time we were blowing one long blast and two short ones, and they al-
1236 ways repeated after us with their fog horn.

Q. You said you have been at sea forty years or so, captain, have you ever been on sailing ships? A. Yes; a great many.

Q. Are you familiar with the sound of fog horns of sailing vessels at sea? A. Yes.

Q. Do you consider yourself competent to judge a good fog horn or not? A. When I hear a sound I know whether it is good or bad; I make an observation.

Q. How many sailing ships have you heard blow-

ing fog horns in the last forty years. A. I couldn't 1237
tell.

Q. A great many? A. Yes.

Q. Judging by your experience as ship master, was the horn on the *Cromartyshire*, the horn that you heard on the *Cromartyshire*, a good and proper fog horn? A. It was a good sound, so much so that I said to the officer on the bridge that I thought it was all right.

Petitioner's counsel moves to strike out what he said.

Q. There was comment made on your ship, then, as to the quality of the *Cromartyshire's* horn? A. 1238
Yes. Of course we often made remarks as to whether it is good or bad.

Q. How long have you been with the Allan State Line? A. Twenty-seven years.

Q. Is their sole course between Glasgow and New York, or do they run to other ports? A. St. Johns, Halifax, Philadelphia.

Q. Which route was the *Grecian* on at this time? A. From Glasgow to New York at that time.

Q. Have you been on the other routes of the Line, to the other places you mention? A. Yes, to all their ports, to Botson.

Q. Are you familiar with the seas in the neighborhood of Sable Island? A. Yes; running past it 1239
long enough.

Q. Is the neighborhood of Sable Island a place where one is apt to encounter other vessels? A. Yes; it is a place where other vessels should be found pretty well. They all have to pass it.

Q. Do ships go over to the north of Sable Island? A. Ships that are bound to Halifax take the course north of Sable Island during the summer months. Of course in the spring when there is ice, they cannot.

1240 Q. How about when the ice is there? A. They go south of it, and then haul up, you know.

Q. What do you say as to the position of sixty miles south of Sable Island, what do you say as to that being in the regular track of liners, of European liners, or not? A. I don't know. I believe they pass farther south than that. Some of the liners do. But of course I am not interested in what the other liners do.

Q. Do you ever meet any of the liners? A. Some of the Anchor Line, Donelson Line, from Glasgow.

Q. Those are the ships that go to the north of Ireland? A. Yes; by the north channel.

1241 Q. Did you ever see any channel ships, English channel ships, go that way? A. I may have, I don't remember.

Q. Is that a locality in which there is much fog? A. Fog is very prevalent there.

Q. Did you take all of the crew and passengers of the *Bourgogne* on your vessel? A. All except one lady and her husband, I think.

Q. How many did you take? A. 165 people.

Q. Did you take any women at all? A. No; there was only one lady left of the whole lot, and the master's wife and two children were on board the ship, so she remained there.

1242 CROSS-EXAMINED BY MR. STEPHENS:

Q. When you saw the *Cromartyshire* for the first time it was half-past two in the afternoon of the 4th? A. Yes.

Q. Did you ever seen the *Cromartyshire* before? A. I had seen the *Cromartyshire*, yes.

Q. Had you ever been on board of her? A. Not aboard of her; I had seen her.

Q. Do you know how many fog horns she had? A. I do not know.

Q. She may have had a dozen? A. I don't know.

Q. Between half-past two on the 4th and the 6th you heard a horn? A. Yes; I heard the horn, using the horn. 1243

Q. You say you towed the *Cromartyshire* to Halifax? A. Yes.

Q. You got there on the 6th of July. A. Yes.

Q. When did you leave Halifax? A. We get in there in the morning, and we got away in the evening again, sometime. I couldn't say what time.

Q. What part of the day? A. Sometime in the evening.

Q. Were you called upon to make any statement in Halifax? A. Yes; I made a statement before a notary. 1244

Q. Before a notary? A. Yes.

Q. Do you know what became of it? A. No, sir.

Q. Ever seen it since? A. No.

Q. At whose instance did you make it? A. Mr. Franklin, the agent of the Line, in Montreal.

Q. He asked you to make a statement? A. Myself and the Chief Officer.

Q. Who was present besides yourself and the notary when you made the statement? A. Myself, the Chief Officer, the Chief Engineer, and there may have been others. I don't remember exactly. I know the Chief Officer and the Chief Engineer were there.

Q. Of the *Grecian?* A. Yes. 1245

Q. Did you have any conversation with any of the officers of the *Cromartyshire* relating to this collision? A. No; I had not.

Q. Before you made your statement? A. No, sir; I had not.

Q. Do you remember what the substance of your statement was? A. Well, it was the telling of all the facts.

Q. As to your meeting her in distress and towing her in? A. Yes; nothing more, as far as I remember.

1246 Q. And you say you didn't meet any of the officers of the *Cromartyshire?* A. No. I saw the master of the *Cromartyshire* for a few minutes, and that was all.

Q. You saw none of the other officers? A. No, sir.

Q. Did you converse with any of the shipwrecked passengers or crew? A. Well, those passengers were on board, but I had very little conversation with them.

Q. You were examined simply as to the incidents from half-past two on the 4th of July until you arrived at Halifax? A. Yes; that was all.

1247 Q. Did your agent tell you what was the purpose of getting that statement? A. No.

Q. Question of salvage? A. Well, it may have been, but he didn't tell me.

Q. Simply wanted your statement? A. Simply took it.

Q. Did you notice, or did you see, any officers or members of the crew of the *Cromartyshire* after she was towed in? A. No; I didn't even see them. She lay at anchor where we left her. She lay opposite the wharf of the Allan Line berth.

Q. You don't know whether they went ashore or stayed aboard, or what they did? A. No.

1248 Q. Did you see them take off the fog horn? A. No; I don't know anything about the fog horn. I didn't see it, or anything about it.

Q. Did you hear anything about the fog horn being out of order, or being taken ashore to be put in order? A. No, sir; I don't know anything about it.

Q. How was your attention first attracted to the *Cromartyshire* on the 4th of July? A. Well, the officer on the bridge noticed that this vessel was lying—it was a little hazy—he could see that she was lying out of the course with her yards un-

trimmed. I think her fore royal, or something, was 1249
down; some one of her masts was smashed.

Q. Could you make out her signal? A. We noticed the N C just as we were going close up.

Q. How far away was she when first seen? A. About three miles.

Q. And you say you were probably sixty miles off Sable Island at that time? A. Yes; that is as near as I could judge. Of course if I had my book I could tell.

Q. Were there any other vessels in sight? A. No, sir; no other in sight.

RE-EXAMINED BY MR. BENEDICT:

Q. Was the *Cromartyshire*, when you found her, 1250
under way at all? A. Her yards were untrimmed; she was just barely drifting.

Q. What was the damage, in a general way what damage had occurred? A. Her bowsprit was gone, her stem pretty well knocked in, and only the bulkhead kept the water out.

Mr. Stephens: Q. Wasn't she damaged aft of the stem? A. You could see right into her, she was open. Only the port hawse pipe was usable.

Q. Her nose was broken? A. Yes. Of course we had to tow very slowly, just about three knots, for fear of anything happening. That was because of her being so damaged. It was about 180 miles we 1251
had to tow.

JAS. W. NUNAN.

Subscribed and sworn to before me this 17th day of August, 1900.

WM. D. JONES,
United States Commissioner.

1252 **Deposition of Corre received Pets. Ex. 8, Oct. 9/01. Endorsed A, June 15.**

LOUIS CORRE (Sworn. Examined through an Interpreter) by Mr. Laing: Q. Were you the steersman on board *La Bourgogne?* A. Yes.

Q. Did you come on duty at four A. M. on the morning of the collision? A. Yes.

Q. Did you go on the bridge? A. Yes.

Q. Who was the officer of the watch? A. The Chief Officer, Mr. Dupont.

Q. How many men were there with him on the
1253 bridge? A. Five, plus the man at the wheel, which made six.

Q. The wheelhouse is on the bridge, is it? A. Yes; on the upper bridge.

Q. Whereabouts did you go to? A. I went to work the siren.

Q. Which side of the bridge did you stand? A. Almost amidships, a little to port.

Q. The siren is on the foremast? A. Yes.

Q. With a cord leading to the bridge? A. Yes.

Q. When you came on duty at 4 o'clock how was the weather? A. It was hazy with fog in patches.

Q. And did you blow the whistle when it was re-
1254 quired? A. Yes.

Q. Later on did it set in more foggy? A. Yes.

Q. What time was that? A. About 4.30.

Q. How was the wind? A. From south to southwest.

Q. Do you know what course your vessel was steering? A. North 7 degrees east, about.

Q. Is that true or magnetic? A. He thinks true by the world.

Q. When the weather came on thick at 4.30 did you sound the whistle regularly? A. Yes; at intervals of a minute, from minute to minute.

Q. Do you know what speed *La Bourgogne* was traveling at? A. No; I do not know. 1255

Q. Could you see the engine room telegraph? A. Yes; I could.

Q. Could you see what the indicator was standing at? A. No; I did not notice at the time I went up on the bridge.

Q. What was the first that you heard from the sailing ship? A. I heard her horn.

Q. How many blasts? A. One single blast.

Q. Did it sound near or far? A. I could not say.

Q. Whereabouts was it from your ship? A. In my opinion I think it was on the starboard bow.

Q. Did you do anything? A. As soon as I heard that blast I gave a blast of the siren. 1256

Q. Did the officer on the bridge do anything? As soon as he heard the blast he jumped to the telegraph.

Q. Did you hear any more blasts before the vessel came into sight? A. I only heard that single one blast.

Q. Did you see her? A. As soon as I had given the blast on the siren I looked up and there I saw her.

Q. How close was she? A. I could not say the distance; she was right on the top of us.

Q. Did you hear any order given to the wheel? A. Yes; hard-a-starboard. 1257

Q. How long after you saw her did the collision happen? A. Immediately.

Q. From the time you first heard the fog horn until the collision happened how long was it? A. I could not say; I had time to blow the siren; I looked up and she was on the top of us. I cannot give any estimate of the time.

Q. Can you say how the vessel's sails were trimmed? A. I only saw her sails on the starboard side.

1258 Q. Were they full or shaking? A. They were full; as far as I could see they were full.

Q. Did she appear to be coming fast or slow? A. I cannot say exactly as to her speed, but she was coming at a good speed, as far as I could see.

Q. Whereabouts on your ship did she strike? A. The forward part of No. 1 boat at first.

Q. What did she strike with first? A. With her jibboom.

Q. Did you notice where her stem struck? A. Abreast of the forward funnel.

Q. How many boats on the starboard side did she disable in the collision? A. Three.

1259 Q. What orders did you get after the collision happened? A. After the collision the Chief Officer gave orders to get the boats out.

Q. And did you go to assist? A. Yes.

Q. Who had charge of the siren after you left? A. A man called Fleury.

Q. Did he sound it while you were getting away the boats? A. Yes.

Q. How often, do you know? A. I cannot say how many times.

Q. After you had been about the boats did you go back and take charge of the whistle again? A. Yes; I came back to my post at the siren.

1260 Q. Did you sound the whistle and keep it sounding? A. Yes.

Q. Did you keep it sounding? A. Yes; I continued to blow it.

Q. Fleury whom you mentioned was drowned? A. Yes.

Q. Were any rockets sent up? A. Yes.

Q. About how many? A. I only remember one of my own knowledge.

Q. How long after the collision was that? A. I cannot say how long after, it was when it was thought there was a vessel to port of us.

Q. Were there any guns fired? A. I do not re- 1261
member any guns.

Q. Did your vessel take a list to starboard? A. At once.

Q. Was it a heavy list? A. Yes; a very heavy list at once.

Q. You told us that three of your boats on the starboard side were disabled in the collision. Were you able to get the port boats over in consequence of that list? A. It was impossible to do so. Men went to try and get them out immediately after the collision, but in consequence of the list they did not succeed.

Q. You were the coxswain of No. 4 whale boat, I 1262
think, on the port side? A. Yes.

Q. The whale boat is kept partly swung out at sea, I think? A. Yes.

Q. Did the Chief Officer order you to go and get into your boat and try and launch her? A. Yes.

Q. And you did so? A. Yes.

Q. The boat was stove in, I think, partly? A. Yes; in launching her.

Q. And after you got her afloat, I think, very soon after the ship went down? A. Yes; almost immediately afterwards.

Q. You saw her go down? A. Yes.

Q. How long after the vessel sunk did the fog 1263
lift? A. I cannot tell you that exactly; I did not pay any great attention, it may have been a quarter of an hour or twenty minutes; but I cannot say.

Q. And when it did lift you saw the *Cromartyshire* on the horizon some distance away? A. I saw something on the horizon. I was not sure what it was, whether it was or not the sailing vessel at that time.

Q. You rowed towards her and found it was the *Cromartyshire?* When we got near her we found it was so, but at first we did not know it was the vessel that had been in collision with us.

1264 Mr. Justice Barnes: How far off was the *Cromartyshire* when you first saw her from your boat? A. In my idea about five miles.

Mr. Laing: After you got to the *Cromartyshire* did you yourself make three trips in your own boat to pick people up? A. Yes, afterwards.

Q. People who were floating about in the water? A. Yes.

CROSS-EXAMINED BY MR. BUTLER ASPINALL:

Q. Did you know how your engines were working at the time of the collision. Were they working ahead? A. I do not know whether they were going
1265 at the time of the collision.

Q. But surely you can tell, cannot you, on your ship, whether your engines are working or not? A. Yes, you can know whether the engines are at work.

Q. Were they at work or not at the time of the collision? A. I know they were working, but I do not know how.

Q. And did they continue working for some time after the collision? A. I do not know what happened when I left the bridge.

Q. How long after the collision did you leave the bridge? A. Perhaps twenty minutes afterwards.

Q. Were your engines during those twenty min-
1266 utes still working? A. They manœuvred ahead and astern during that time for the horn which had been heard to port.

Q. When you saw the *Cromartyshire* about five miles off was *La Bourgogne* still afloat? A. No; she had gone down by that time.

Q. How long had you been in your boat when you saw the *Cromartyshire* five miles off? A. I cannot say exactly, perhaps two hours, perhaps more.

Q. Do you remember after you got on board the *Cromartyshire* having a talk with the Captain and one of the men called Van Hooker, a Belgian? A.

I do not remember the Belgian, but I remember talk- 1267
ing to the Captain.

Q. If you do not remember the Belgian, how did you have a conversation with the Captain? Was it in English or French? A. There were passengers on the poop who aided me as interpreters.

Q. And did you not tell the Captain of the *Cromartyshire* that at the time of the collision your vessel was going 18 knots? A. No; I did not.

Q. Did you talk about the speed of *La Bourgogne* at the time of the collision, with the Captain of the *Cromartyshire?* A. No; I did not, but perhaps I ought to explain that I had no conversation with the Captain when I first went on board. It 1268
was later on when I heard it.

Q. When you had the conversation later on did you talk with the Captain about the speed of *La Bourgogne?* A. No; I never spoke to him about the speed.

Q. What did you speak about? A. The only conversation I had with him was when I came back from towing the raft the second time. I went up to him and said if he did not alter his course we could never catch him with that raft.

Q. At the time when the vessels were in collision how long after that did you keep the *Cromartyshire* in sight. Was she out of sight in a second or 1269
two? A. I cannot say.

Q. Was it a very short time, instantly? A. I cannot say how long she took, it was not immediately, she passed along the side, but when she got aft I did not look after her.

Q. After the collision did you see any rockets or hear any guns from the *Cromartyshire?* A. No; not from her.

Q. From any other ships? A. No rockets or cannons; we heard a horn which we thought was a vessel passing.

1270 Q. Did you think it was from the *Cromartyshire*, or from some other vessel? A. I cannot say; I never did know from where it came.

Q. Was that horn that you heard a single blast or a double blast? A. After the collision?

Q. After the collision. A. We heard several blasts to port after the collision.

Q. Do you know how you were heading at the time? A. No.

Q. I think you signed the protest, did you not, that was made out at Halifax? A. Yes. (A translation of the protest was produced and read as follows: "We the undersigned, who were on watch on
1271 board *La Bourgogne* at the time when she was struck by the sailing vessel *Cromartyshire* on the 4th of July at 10 minutes past 5 A. M., in a thick fog, testify that the siren of *La Bourgogne* was sounded every minute; we heard the foghorn of the sailing vessel one minute before she struck us. She struck us on the starboard side, with her jib-boom, forward of the davit of No. 1 boat. Then she stove in the plate of the upper bridge, and stove in No. 3 whaleboat abaft the upper bridge, her hull coming in and staving in our plates on the starboard side, *La Bourgogne* immediately took a list to starboard, rendering the port boats useless. All
1272 the officers were at their posts, the captain being on the upper bridge. No. 11 boat was seized by Austrian or Italian sailors who refused to allow other persons to get into the boat which would have carried from 40 to 50 persons. No. 5 starboard boat was stove in by the collision. No. 7 starboard boat was stove in by the funnel when the steamer foundered." When you signed that protest were any questions asked you about the speed at which *La Bourgogne* was going? A. No.

Q. That is the only protest you have made, is it not? A. At Halifax, yes; that is the only one.

RE-EXAMINED BY MR. PYKE: 1273

Q. Those Austrian and Italian sailors, they were not members of the crew, were they? A. No.

Q. You told us there were five persons on the bridge, were everyone of them drowned, except yourself? A. Yes; at the moment of the collision.

Mr. Justice Barnes: Just ask him this. He said he gave a blast of the siren after hearing the horn of the ship and the officer jumped to the telegraph. Ask him if he saw what he did to the telegraph? A. Yes; I saw him go to the starboard side to the telegraph, and then I noticed that he put it to standby.

1274

Q. Can you tell us as you saw him do that where it was before he pulled it over? A. No; I did not notice; I do not know.

Q. He said that 4:30 it came on more foggy, and he sounded regularly. Just remind him of that? A. When I say regularly, just by habit. I got to do it by intervals.

Q. Ask him if at that time when he says it came on more foggy, he saw the officer or anybody do anything to the telegraph then? A. No; I did not. I was not occupied in watching what the officer of the watch did; I was occupied by my siren and did not pay attention to anything else.

1275

Q. Does the telegraph ring? A. Yes.

Q. Can he tell us one way or the other whether when the weather became more foggy anything was done to the telegraph by anybody? A. Something may have been done, but I could not say whether it was or not. I was at the cord of the siren and whilst I was working that someone may have telegraphed.

Mr. Pyke: One point might be useful. I think some of the witnesses state that *La Bourgogne* was struck on the starboard side by her jibboom for-

1276 ward of the davits of the boat No. 1. I think it is desirable to know how far No. 1 boat is from the stem. (To Mr. Simon) Is that the proper boat plan? (Produced.) A. Yes.

Mr. Pyke: I think your Lordship will find that the boat mentioned is about 45 yards from the stem, and it is forward of the davits of the boat No. 1—it is 120 feet from the stem.

EDWARD LAISUE, sworn.

EXAMINED THROUGH THE INTERPRETER BY MR. PYKE:

1277 Q. Were you Fourth Engineer on board *La Bourgogne* at the time of the collision? A. Fourth Engineer.

Q. I think you had been in her for six months—that is four voyages? A. Yes.

Q. And also been in her in 1893 and 1894, for some eighteen months? A. Fifteen months.

Q. You were in the 10 to 2 watch—from 10 P. M. to 2 A. M.? A. Yes.

Q. The total number of engineers was eight, I think? A. Yes.

Q. And I think in your watch there were a total number of 26 men, including stokers and firemen?

1278 A. 26 in all.

Q. During your watch from 10 to 2 did you have any fog? A. I heard the first blast of the siren at a few minutes before midnight.

Q. Did you have any orders as to your speed? A. No; I did not get any order. I took steps for reducing speed, but I did not get any order.

Q. Is that in accordance with standing regulations or not? A. I could not reduce speed unless I got an order to do so, but the regulations on board *La Bourgogne* are that, as soon as the engineer

hears the siren working that he is to take steps to 1279
be ready to reduce speed.

Q. And did you take steps to reduce your speed? A. Yes; I told the men to stand by so as to be ready to close the ashpit doors and take the ordinary course to reduce speed.

Q. At that time was your vessel going full speed or not? A. Yes, she was going full speed then.

Q. How many revolutions was she making? A. About 60-61.

Q. Was that as many revolutions as you could get out of her? A. We used to go about 63, but as she was loaded then we could not have made more than 61. 1280

Q. How many knots an hour would that give her—the 61 revolutions? A. I do not know.

Q. Who took charge of the engines when your time was up? A. The Third Engineer took the watch at 2 A. M.

Q. Then did you go to your bunk and go to sleep? A. Yes; I undressed and got ready to turn in.

Q. When you left the engine room was the siren still blowing or was the weather clear and the siren not blowing? A. No; it was not working during the whole of my watch. I only heard two or three blasts of the siren.

Q. You were awakened, I think, by the shock? 1281
A. Yes; I was sleeping soundly.

Q. Did you look through the porthole of your cabin? A. I sat up and I looked out through my port-hole, and I saw this vessel there—I saw her stem passing my porthole.

Q. Did you go from your cabin into the engine room? A. Yes; I got up and put on a pair of trousers, then I went and looked round the engine room door and I did not see anything, so I went down in the engine room immediately.

Q. How far is your cabin from the engine room?

1282 A. It is about 10 metres above the working platform of the engine room.

Q. When you went into the engine room, how were the safety valves? A. The engines were not working then.

Q. Was there any escape of steam? A. No escape of steam, because the engines are not arranged that way, and it cannot escape by any means, except by the safety valve.

Q. And was it escaping from the safety valve? A. Not at all, because it makes a frightful row and everyone would have heard it.

Q. If the vessel had been going at full speed,
1283 and had been suddenly stopped, would you have expected any escape of steam from the safety valves? A. Yes; it must have done less than a minute even after the stoppage.

Q. And did you find the Chief Engineer in the engine room? A. Yes; he was at the starting gear.

Q. When you went into the engine room and found the Engineer there, what were the engines doing—were they moving or were they stopped? A. They were stopped.

Q. Then I think you were ordered by the Chief Engineer to go forward to see if there was anything wrong, were you not? A. Yes; to go into the stoke
1284 hold and see what was the matter.

Q. We have heard that three of the starboard boats were stove in. Did the funnel fall down on any of the boats? A. Yes, on No. 7 boat.

CROSS-EXAMINED BY MR. BUTLER ASPINALL:

Q. How long were you in the engine room after the collision? A. The first time I came up on deck after being down was about 4 minutes after the collision.

Q. But how long were you in the engine room? Were you in the engine room 4 minutes? A. I got

down into the engine room about one minute after 1285
the collision; I remained there three minutes, and then I went up on deck, according to orders.

Q. Was there any reason why you should examine the safety valves? A. No; I had no reason to examine them, but they were not working because if they had been I should have heard it. I was in the stoke hold.

Q. You were rather excited, were you not? A. Not at all.

Q. When you felt the shock of the collision did that wake you up or were you awake then? A. No; I was asleep and I was awakened by some of the spars of the sailing vessel which fell above my 1286
cabin.

Q. When you first awoke, could you feel whether your engines were working? A. The engines were stopped when I awoke, certainly.

Q. You did not sign the protest, I think, at Halifax? A. I do not remember. I have signed so many documents these last six months.

Q. Your name is not here. When was the last fog whistle that you heard before you left the engine room at 2? A. Before midnight.

Q. That was the first, was it not? A. I heard about two blasts, one perhaps at 10 minutes to 12, and the other before 12—after 12 I heard none. 1287

Q. Did you ever go on deck yourself? A. No, I never left my watch to go on deck.

Q. When you left the engine room at 2 after your watch, did you then go up on deck? A. Yes.

Q. How was the weather at 2, when you went up after leaving the engine room? A. It was very clear, there was no fog whatever.

Q. Do you remember having a conversation with the Captain of the *Cromartyshire*, after you got on board the *Cromartyshire?* A. It would be very difficult for me to do so; I cannot speak English.

1288 Q. Was not there a man on board the *Cromartyshire* who could speak French—a Belgian, I think he was? A. It may be there was some one who acted as interpreter for me when the Captain asked me some questions.

Q. And did not the Captain ask you, the Engineer, about the speed of *La Bourgogne?* A. No; no questions were put to me.

Q. He knew that you were the engineer, did he not? A. Some one probably told him. He asked if I was a deck officer and wanted to know the position of the ship. I said I did not know anything about the ship. I was not a deck officer. I was an

1289 Engineer.

Q. And after you had told him you were an engineer, did not you tell him that your vessel was going full speed at the time of the collision? A. How could I have told him when I did not know anything about it? I did not know what speed she was going. I never spoke to him about it.

Q. Was there not one of the passengers, a Mr. Como, present at the time? A. I do not know. I do not remember who was there.

Q. Do you know when it was that you left New York? A. At 10 A. M. on Saturday, the 2d.

Q. Do you mean in the morning, A. M. or P. M.?

1290 A. 10 A. M.

Q. Was that when you left New York, or when you passed Sandy Hook, do you mean? A. He thinks about noon at Sandy Hook. It is about an hour and a half to get to Sandy Hook.

Q. Had you had fog before the 4th July, the day of the collision? A. No.

Q. Not on the 2d, or the 3d, just think? A. No.

Q. Are you sure about that? A. I am almost certain—I cannot remember it.

Mr. Justice Barnes: Was Saturday the 1st? 1291

Mr. Butler Aspinall: Saturday was the 2d, my Lord.

RE-EXAMINED BY MR. PYKE:

Q. What time did you go to bed after your watch? A. At 3 o'clock.

Q. At 3 o'clock, was the syren sounding or not? A. No.

Q. And as I understand, it had not sounded since midnight? A. No; I never heard it.

Q. You said that after 3 minutes in the engine room you went up on deck and carried out orders, was one of those orders to cut away the rafts? A. No; the order was to go to the Captain and tell him the water was pouring in to the stoke holds. 1292

Q. Did you cut away the rafts? A. Yes; but a long time afterwards. I went down three times into the engine room before that.

Q. I see amongst the saved of the engine room officers is a Mr. Le Bourche, described as "Aide." What was his position? A. He was an Assistant Engineer.

Q. Was he in charge of the engines or in the engine room at the time of the collision? A. No; he went off watch at 10 o'clock.

1293

EVE RALLE, sworn.

EXAMINED THROUGH THE INTERPRETER, BY MR. JOSEPH WALTON:

Q. Were you a stoker on *La Bourgogne*? A. Yes.

Q. On the morning of the collision what time did you come on duty? A. At 2 o'clock.

Q. And were you on duty at the time of the collision? A. Yes.

1294 Q. What were you doing? A. I was just standing by, I was doing nothing.

Q. But before the collision were you employed stoking the port fire in the forward stoke hold? A. Yes.

Q. Do you remember between 2 and 4 o'clock getting any orders with regard to the ash pits? A. The ash pit doors were closed.

Q. You were told to close them? A. Yes; I got an order to close them.

Q. What time would that be? A. About three o'clock.

Q. Before that were you forcing your fires at all,
1295 before you got that order? A. Not at all.

Q. When the ash pit doors were closed was the pressure reduced? A. Yes.

Q. To what was it reduced? A. It fell to 10.10.

Q. That is kilos, is it not? A. Yes.

Q. What is the full pressure? A. 11½ full pressure.

Q. What is the minimum pressure? A. Just down to 6.

CROSS-EXAMINED BY MR. BUTLER ASPINALL:

Q. You did not sign the protest, I think, at Halifax? A. No.

1296 Mr. Justice Barnes: Does he see the gauges when he is stoking or are they in the engine room.

Q. Mr. Butler Aspinall: Where are the gauges? A. Between the boilers.

Q. Mr. Justice Barnes: Is there one to each boiler? A. Yes.

Mr. Butler Aspinall: Can you see them when you were stoking? A. Yes.

Q. You did not sign the protest? A. No.

RE-EXAMINED BY MR. PYKE:

Q. Do you know what orders were given in the engine room or not? A. No.

Q. Mr. Justice Barnes: Can he tell us what this represents in our own pressure of pounds of steam? Is this a kilogramme? A. Kilogramme is about 2 lbs. I do not understand about this pressure; it represents nothing to me. 1297

Mr. Pyke: I can give it to your Lordship. There is a gentleman here. It works out about 130 lbs. It is a different method of computation.

Mr. Justice Barnes: Just ask him so as to get it accurately. What does he say the pressure of the boiler was at the moment of the collision? A. 9½.

Q. On each boiler is that—one or more? A. The two forward boilers. 1298

Mr. Pyke: 10 kilos is about 140 lbs. per square inch; it is 10 kilos per square centimeter.

Mr. Justice Barnes: Perhaps the same gentleman will give us what 9½ represents.

The Gentleman: About 132 lbs.

Justice Barnes: And 11½.

The Gentleman: 162 lbs.

Mr. Pyke: I have three or four other survivors, who were on deck, but they took no part in the navigation of the ship, and they really throw no light upon the matter. I will produce them if any friend desires it. They took part in saving life and that is all. 1299

CAPT. O. H. HENDERSON, RECALLED:

Mr. Justice Barnes: When were the main topmast staysail and spanker set? A. The main topmast staysail and spanker were not set from the time we reduced sail the previous day.

(Endorsed)—"A" June 15, 1901.—Referred to in order of June 15, 1901, *in re* petition of La Comp. Gen'rle a la *Bourgogne*.—Pesp. E. 8.—A. Brown.—Oct. 9, '01.

1300 At a Stated Term of the District Court of the United States of America, for the Southern District of New York, held at the United States Court Rooms, in the City of New York, on the 15th day of June, 1901.

Present: The Honorable ADDISON BROWN,
District Judge.

IN THE MATTER

OF

1301 The petition of the COMP. GEN. TRANS., owners of the S. S. "BOURGOGNE," for a Limitation of Liability.

An application being made on behalf of the petitioner, based on an affidavit of E. K. Jones, Petitioner's proctor, for the issuing of a commission to examine witnesses in said commission named, and said motion being opposed by the Claimants on the affidavit of R. D. Benedict, and of A. G. Murray,
1302 and on hearing Counsel for the respective parties it is

Ordered that the motion for a Commission be denied and that the trial of this cause be commenced on Friday, the 21st of June inst., and that after the evidence which the Petitioner may offer and which the Claimants may offer has been put in, before the Court, that the further hearing of the cause be suspended until Aug. 6th, at 11 A. M., when the same shall proceed. The Petitioner has leave to accept the offer of Claimants' Counsel to read in evidence the copy of the testimony and

depositions in the English Court marked "A" of 1303
this date, given by the witness in behalf of the petitioner.

ADDISON BROWN.

(Endorsed)—Order Filed June 15, 1901.

At a Stated Term of the District Court of the United States of America for the Southern District of New York, held at United States Court Rooms, in the City of New York, on Tuesday, 1304
the 2d day of July, in the year of our Lord one thousand nine hundred and one.

Present: The Honorable ADDISON BROWN,
District Judge.

IN THE MATTER

OF

The application of LA COMPAGNIE GENERALE TRANSATLANTIQUE to limit its liability as owner of the Steamship "LA BOURGOGNE." 1305

The trial of this cause having been set down for the 21st day of June, 1901, and on that day, owing to the illness of the Judge, a minute having been entered that the trial be postponed till a day to be fixed by the District Judge.

It is now ordered that the trial of this cause be

1306 postponed till the first day of the October Term of this Court, the cause to stand at the head of the calendar for that day.

ADDISON BROWN.

(Endorsed)—Order setting cause for trial.—Filed July 2, 1901.

U. S. DISTRICT COURT,

SOUTHERN DIST. OF NEW YORK.

1307 IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability, etc.

This cause coming up before the Court on the call of the Calendar and it appearing that the Judge of this District is disqualified by reason of
1308 having heretofore, while in practice at the bar, written an opinion upon the law of the case upon the request of an attorney for some of the Claimants, it is, ordered that the same be sent to Judge Thomas to be disposed of by him.

Dated New York, October 3rd, 1901.

(Signed) GEO. B. ADAMS,
U. S. District Judge.

Submitted in behalf of C. G. T., Petitioner.

(Endorsed)—Order sending cause to Judge Thomas.—Filed Oct. 3, 1901.

UNITED STATES DISTRICT COURT, 1309

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the CAMP. GEN. TRANSATLANTIQUE for a limitation of liability.

1310

On the pleadings and proceedings herein the Petitioners' Proctor show cause before me on the 5th day of October, 1901, at 10:30 o'clock A. M., at my chambers in the Post Office Building in this District, why an order should not be made herein setting down the trial of this cause for a day specified, or why such other or further order in relation to the trial of this cause should not be made as shall seem meet.

EDWARD B. THOMAS,
U. S. J.

1311

(Endorsed)—Order to show cause adjourned to Oct. 9th, 10 o'clock.

E. B. T.,
U. S. J.

1312 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability.

1313

The order made herein to show cause why a day should not be set for the trial of the same, coming on to be heard, and on hearing the proctors for the respective parties, it is

Ordered that the trial of this cause be adjourned until this 9th day of October, inst., at 11 o'clock, to be heard before Judge Townsend.

EDWARD B. THOMAS,

Oct. 9, 1901. *U. S. J.*

1314 (Endorsed)—Order directing trial before Judge Townsend.—Filed Oct. 9th, 1901.

UNITED STATES DISTRICT COURT, 1315

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability.

Before Hon. W. K. Townsend, Judge.

1316

NEW YORK, October 9, 1901.

APPEARANCES:

EDWARD K. JONES, Esq., for the petitioner;

Messrs. BENEDICT & BENEDICT for George Deslions *et al.*;

A. GORDON MURRAY and G. W. BETTS, Esqs., for W. C. PERRY *et al.*;

WM. LINDSAY and EDWARD L. KALISH, Esqs., for Josephine M. Chanut;

G. T. GOLDTHWAITE and HERBERT NOBLE, Esqs., for Harry S. Jones and Alice B. Evans as administrators. (Four actions.) 1317

Messrs. BULLOWA & BULLOWA for Louis Delfonte, as administrator, etc.

Mr. Jones: Right at the threshold of the case is the question of the burden of proof. Judge Brown has given some consideration to that subject when he set this case down for hearing, and his impression, as expressed at that time, was that the burden of proof was on the respondents. This is a statutory proceeding, based partly upon an Act passed

in 1851, and partly upon two subsequent Acts, one in 1884 and the other in 1886. Section 4283 of the Revised Statutes, which is a re-enactment of one of the sections of 1851, provides as follows:

> "Sec. 4283: The liability of the owner of any vessel, for any embezzlement, loss or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter or thing, loss, damage or forfeiture, done occasioned or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending."

A subsequent section in the same resolution provides as follows:

> "Sec. 4285: It shall be deemed a sufficient compliance on the part of such owner with the requirements of this Title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."

Now, somewhat differently from the ordinary practice in these cases, we have followed the statute, and made a transfer to a trutsee. The trustee has the title to whatever interest we have in that ship

and her pending freight, and the statute says that 1321
that is a sufficient compliance on the part of such owner with the requirements of this title.

Now here we are. A number of claimants have put in claims, and we have complied with the statute, and the law expressly says that "a sufficient compliance" has been made and after that transfer all proceedings against the owner shall cease. We are prepared to meet the claims that have been filed in this proceeding, and the burden of proof is upon the plaintiff to make out a case affirmatively by a fair preponderance of evidence, and we stand precisely in the same situation here with this trustee which we have done and which the statute says is 1322
a sufficient compliance with the statute.

I say now that the burden of proof is upon these claimants; it certainly can't be thrown on us when this legislation is made in the interest of the ship owner. It certainly cannot be that a statute of this kind will throw the burden on us; that is not reason and common sense, and the statute says it is not the law. We have complied with the law, and here we are to meet these claims and to meet any proofs of fault or negligence that these claimants may allege against us.

Mr. Benedict: There is no question before the Court; when the pleadings are read, so that the 1323
Court knows what the case is, then we can take the next step.

Mr. Jones states the facts of the petition;

Mr. Benedict the facts of the answers represented by him;

Mr. Murray the facts of Perry's answer.

Mr. Jones: The attention of the Court is called to the order directing the transfer of the petitioner's interest, and the appointing of a trustee, filed May 15th, 1900; and also of the transfer of the petitioner's interests to the trustee appointed by the Court.

1324 There has been some question in the proceedings in this case as to whether some advance freight, which of course we admit that we received—there is a question of law which has arisen in the case as to whether or not the advance freight and passage money, and also a certain portion of the yearly subsidy for that voyage, is properly covered by this transfer. Judge Brown was applied to by the trustee to order the company to transfer this advance freight, and he refused so to do.

Mr. Benedict: Oh, no; he has never decided that motion.

Mr. Jones: But he has intimated from the bench
1325 that it is for the trustee to bring suit, if there is any question as to that. The point is this: That the transfer has been executed and delivered to the trustee. If there is any property he ought to get from us it is his business to get it. That has nothing to do with this case. We have complied with the statute by making the transfer, which the Court directed, and the claimants come in here with allegations which, if even some of them were true, ought to send every officer and every man in this company to the State's prison. They are untrue, and it is for them to make them out by proof, if they can. It is not for us to disprove. Ordinarily, if these allega-
1326 tions were not made, the order for limitation of liability and a reference to a Commissioner to determine the claims would be a matter of course. They come in here with all these allegations, and I say that they are called upon to prove them.

Another point that the Court will have to determine is whether or not the Act of 1884 repeals that part of the Act of 1851 which prescribes a limitation in cases where the loss occurred without the knowledge or privity of the owner. The Act of 1884 omits the words "knowledge or privity," and I contend that the Act of 1851, as revised, is repealed as

to that. So that it is immaterial in this case 1327
whether there was knowledge or privity or not.

[PETITIONER RESTS HIS CASE.]

Mr. Benedict: We bring up the question of what the decree is to be; the petitioner rests without proving the allegations of the petition. That presents perhaps clearly enough the question of where the burden of proof is, and as that has been decided, I may as well call your Honor's attention to the decision. The case is the case of Quinlan *vs.* Pew, 56 Fed. Rep., decided in the First Circuit, in 1328
which the Court states:

> "* * * admiralty rule 54, providing that owners claiming a limitation of liability may file a libel or petition setting forth the facts and circumstances on which such limitation is claimed. Although the rule does not specifically provide for maintaining the allegations of the petition, and passes at once to another subject matter, yet it follows, as a matter of course, that what must be alleged must be proved."

Without going any further, it seems that there is 1329
a decision that the allegations of the facts of this collision which are denied, and the alleged fact of the freedom from liability of the petitioner by reason of its own action, must also be proved.

Furthermore, the Court says "There is enough here, however, to suggest a question of the burden of proof." While perhaps in the Admiralty Courts this question does not take the sharp form which it does at common law, still the underlying principles touching it are recognized, and as in this case, the owners were obliged to allege, in order to maintain

1330 the privilege of limitation that they were without privity or knowledge, and as this proposition is one peculiarly within their own cognizance, a certain burden rests upon them. (1 Greenl. on Evidence sec. 78, 80 and 3 do. sec. 404.) It is true that the Admiralty Courts will administer this rule with large regard to the convenience of proof as is apparent from passages in Butler *vs.* The Steamship Company."

There is the decision that the burden of proof, of the allegations which they have made, rests upon them; therefore, as they have given no proof whatever freeing themselves from that, I think we are
1331 entitled to proceed with the trial of the case, with the decision from your Honor that they have failed to make out the case which they have alleged, and which is the foundation of the claim of limitation of liability that they have set up. I don't know whether your Honor will rule upon this now, or whether you will reserve that; but I want the counsel on the other side distinctly to understand that if he fails to put in proof now to establish his case, I shall object in a most strenuous way to his attempt to put in any evidence on that point after the evidence on our side comes in. He is bound to try this case in the ordinary and regular way and close his case at the beginning and he should not be
1332 allowed to lie back and keep his testimony back at the time when it ought to be put in, and ask then for relief at a later stage of the case; he has, therefore, fair notice that that is what I shall claim at the hands of the Court, as I should in any other case, and as I shall be entitled to.

Mr. Jones: You will observe that this decision says nothing of the Act of 1851, Reviesd Statutes, in regard to what effect a transfer has. The statute is the governing thing here. No rule of the Supreme Court or any court should be made to detract

in the least from the force and effect of the statute. 1333
This case here says nothing of the effect of that statute.

Mr. Benedict: I ought to say to your Honor that this is the first case in which this attempt has been made. There have been in this district and in the Eastern District very many cases of limitation of liability where answers have been put in, and similar contests have been brought up as is brought up here. In every case, without exception, the petitioner has put in his proof first, and this is the first time that such a claim has ever been presented—I am quite sure I am correct in saying that—either in this district or in the Eastern District of New York. 1334

The Court: Do I understand that Judge Brown practically ruled on this question?

Mr. Benedict: No, he never ruled on any such question. I deny it utterly.

Mr. Jones: This case was set down by Judge Brown for hearing before him on the 28th of June, with the provision for adjournment until the 6th of August, when we were ordered to produce our witnesses. When that order was made Judge Brown made the remark that the burden of proof was upon the claimants. There was some discussion about that, and Judge Brown made the remark. Here is a collision that occurs hundreds of miles from the land; no corporate officer of the company was there, 1335 and following the maxim of the law the situation speaks for itself, and the presumption of course is that there is no privity or knowledge even though the petitioner has got to make out a case without privity or knowledge; *res ipsa loquitur,* and the Judge's idea was that the admitted fact, as the pleadings show, threw the burden of proving on the claimants; the collision occurred with no officer of the company there. I don't claim that Judge Brown decided absolutely. I mean to say that there was the discussion.

1336 Mr. Benedict: Judge Brown did not intimate that as his view on the law of the case at all. The case was called for the third time on the calendar of the court. An application was made by counsel on the other side for a commission. Judge Brown denied that commission, the counsel having stated that he would bring his witnesses here to attend the trial. The Judge set the case down on a certain day, and then said that we should put in our testimony, and then he would reserve the opportunity for the further testimony to be put in by the other side. That is all that was done; that was the order that was made. I haven't the faintest memory that Judge
1337 Brown said anything about the burden of proof.

Mr. Betts: I remember that there was a good deal of argument, but I don't think that he, for a minute, presumed to actually give his decision on the question. I think it came up on the question of the issuing of a commission; but of that I am not positive.

Mr. Benedict: I remember that I tried a case, the case of the *Hustler*, before your Honor, in which the petitioner at once assumed the burden of proof, as in every case here.

The Court: I had one of these cases, and my impression is that, while I think it is a very doubtful
1338 question, it seems to me that the burden is not upon the claimants, but upon the party who claims the limitation of liability. I shall rule that the burden of proof is upon the party seeking the limitation of the liability to show by some evidence the allegations in his petition that the loss has occurred without his privity or knowledge.

Mr. Jones: Of course then I open the case.

If your Honor please, in the first place I have taken an important deposition of the marine engineer of the company, which I offer in evidence; it is that of Paul Lannes. The substance of this depo-

sition is that he is a marine engineer; he is not now 1339
in the employ of the company, the name of which he gives, and he was the chief engineer of the company at Havre at the time of the disaster to the *Bourgogne*, and he testifies to the number of bulkheads which she had, describes their structure, testifies that there were twelve lifeboats and four life rafts, and that they were all in good order and that the ship had been, shortly prior to the collision, thoroughly overhauled at the works of the company, and was in perfect condition. Lifeboats and life rafts of more than sufficient capacity and of proper quality, the usual disengaging apparatus for lowering them, and far more in capacity than the number 1340
of persons on board required; that she had been inspected and had passed the inspection of the authorities in Havre as to her seaworthiness; and I also refer to a report which Mr. Benedict objected to, because it wasn't certified; if that objection is made I simply rely upon the fact that a report was made, and she was found to be in good condition by these officers and probably I can get a certified copy before the argument.

(Mr. Jones produces the report.)

The witness, Paul Lannes, further testifies that she was a one-screw steamer, built of steel, and 1341
gives her dimensions, which show that at that time she was a full power steamer, of the first class, navigating the North Atlantic Ocean.

1342 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition for Limitation of Liability of LA COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the steamship
1343 "LA BOURGOGNE."

DEPOSITION OF PAUL LANNES, taken before a notary public on behalf of petitioner at the office of Edward K. Jones, Esq., No. 51 Wall street, New York, October 2, 1901.

Present—Mr. BENEDICT, Mr. MURRAY, Mr. KIRAFLY and Messrs. KENNESON, CRAIN & ALLING for claimants;

EDWARD K. JONES, Esq., for petitioner.

1344 It is stipulated that the deposition may be taken in shorthand; signing, filing and certificate of notary being waived; stenographer's fees to be taxed.

PAUL LANNES, being duly sworn and examined through Capt. Stetson as interpreter (who was first duly sworn) as a witness for the petitioner, testifies:

By Mr. Jones:

Q. What position do you hold in the service of La Compagnie Generale Transatlantique at pres-

ent? A. I am not at present in the Compagnie 1345
Generale Transatlantique.

Q. Were you in the service of that company in the year 1898? A. I was.

Q. What position did you occupy during that year? A. Chief engineer of the company in Havre.

Q. By chief engineer, do I understand that you are a marine engineer or what is termed a scientific engineer? A. I was a scientific engineer and had charge of all the material of the company on land. What I mean to say is that I was residing on shore, but I had charge of all the material of the company, afloat and on shore.

Q. What were your duties or employment with 1346
respect to the construction and operation of the ships of the Compagnie Generale Transatlantique when you were in their service in 1898? A. I only had to do with the vessels of the line which came to Havre; I had to do with the keeping up of the ships in every particular and with seeing that they were in perfect order every time that they went away.

Q. You were familiar with the steamship *La Bourgogne* before her loss in the year 1898? A. I knew that ship, as well as all the other ships of the line, from and after the year 1894.

Q. Do you know when the *Bourgogne* was built? A. In 1886. 1347

Q. Can you, either from memory or from any data that you can refer to, state her length, depth of hold and breadth of beam? A. I have not the exact dimensions.

Q. Without being exact, state about what her length was? A. 153 metres long, about; about 15 metres 10 beam; about 11 metres and a half or a quarter depth of hold.

Q. What engines did she have? A. An engine of six cylinders; quadruple expansion.

Q. More than one screw? A. One screw.

1348 Q. What was her speed about in ordinary fair weather? A. On her first trial in 1886 she made about nineteen knots.

Q. Do you know about her ordinary speed at sea in fair weather? A. Seventeen to seventeen and a half knots.

Q. Have you any diagrams showing the lines of her construction? A. Yes; those which are on the table.

Q. There are three drawings there? A. Yes, sir.

Q. Take the first one and describe it generally. A. No. 3282 is a general description of the ship in her length. There are six views of the ship in the
1349 three plans here, giving horizontal and longitudinal views of her.

Q. And those three plans are marked 3282, 3283 and 3284? A. Yes.

These plans are offered in evidence by petitioner's counsel and marked respectively Petitioner's Exhibits Nos. 1, 2 and 3, of this date.

Q. Was the *Bourgogne* provided with watertight bulkheads? A. Yes.

Q. How many? A. Eleven. There is one that counts for two. You can call it ten or eleven as you like; one that is double.

Q. How did those bulkheads run; transversely or
1350 longitudinally? A. They were transversely.

Q. All of them? A. Yes.

Q. Just describe generally where those bulkheads were placed on the ship. I don't ask you to go into minute details, but describe them generally, beginning at say the bow and running back to the stern. A. Starting forward the first one, which we call the collision bulkhead, was the limit of the fore peak. The second one defines the compartment which is intended for the people on board the ship. Between the second and third there are also com-

partments that were intended for the food and the 1351
people on board belonging to the ship, and the first hold for cargo. From the third to the fourth is the compartment intended for cargo. From the fourth to the fifth, the coal bunkers. From the fifth to the sixth, the first group of boilers. From the sixth to the seventh, the second group of boilers. From the seventh to the eighth is a sort of double compartment, which covers a coal bunker. Eighth to ninth, the engine-room compartment. Ninth to tenth, the first after cargo hold. Tenth to eleventh, the after hold for cargo; and from the last bulkhead to clear aft is the after peak of the ship. The shaft is also enclosed in a tight compartment. 1352

Q. What was the condition of those bulkheads when the *Bourgogne* sailed from Havre before she was lost on her return voyage from New York? A. Perfect; like new.

Q. State whether or not *La Bourgogne* had been overhauled at any time shortly previous to this voyage? A. In 1897 and the beginning of 1898 she was made new, so to speak; overhauled completely. At that time she had new boilers.

Q. How long was this before the disaster in which she was lost? A. The work was approved of by the official commission and accepted by them in the month of March, 1898. This followed the 1353
end of the work immediately.

Q. Have you in your possession or can you refer to any certificate to that effect? A. The Compagnie Generale Transatlantique has that; showing that it fully complied with all the requirements of the government as to postal steamers.

Q. Did you see the report of the commission in regard to her condition? A. I did.

Q. Will you look at the paper I hand you and tell me if it is a copy of that report? A. It is.

Mr. Jones: I offer it in evidence.

1354 Mr. Benedict: Before that is marked in evidence I want to cross-examine the witness as to his knowledge of its being a copy.

The paper referred to, copy of report identified by the witness, is marked for identification Petitioner's Exhibit No. 4 of this date.

PRELIMINARY CROSS-EXAMINATION BY MR. BENEDICT:

Q. When did you see the report itself? A. I saw it during the month which followed the acceptance of the ship.

Q. That is, in April, 1898? A. I can't say the date exactly, but the report was drawn up immedi-
1355 ately, and I saw it then.

Q. And you have not seen it since? A. No.

Q. You have never compared this paper that is here produced with that? A. No, sir; not personally.

Mr. Benedict: We object to the offering of the paper.

Mr. Jones: I have not offered it yet.

DIRECT-EXAMINATION RESUMED BY MR. JONES:

Q. A report was made by the commissioners named in this paper approving of the repair work of the *Bourgogne* at that time. Is that the fact?

1356 Mr. Benedict: Objected to; the report is the best evidence.

A. Yes; a report agreeing upon the acceptance of the ship as fulfilling all the requirements of a postal ship, according to the French laws.

Mr. Benedict: I move to strike out the answer, as the report itself is the best evidence.

Q. Please state how many lifeboats the *Bourgogne* was provided with when she came off this voyage that I have referred to, on leaving Havre. A. There were twelve boats. Do you wish me to

describe them? Among those there were two whale- 1357
boats. I don't know whether you wish to have them defined as lifeboats.

Q. I would like you to describe the total number of lifeboats and life-rafts with which the *Bourgogne* was provided. A. When I said twelve I said twelve boats. I have not referred to any life-rafts.

Q. Then I understand you that there were twelve lifeboats? A. There were ten boats which had air chambers in them; besides two whale-boats which were suspended from their davits so that they could easily be put in the water. That makes twelve boats in all.

Q. How many life-rafts were there? A. Four. 1358

Q. Do you know whether the *Bourgogne* before she sailed on her last voyage from Havre was inspected and her condition certified to by the Bureau Veritas? A. Not just before her last departure, I think.

Q. Do you remember about when that last inspection was made? A. Right after her repairs were finished, I think there was a certificate in the month of March. There was an inspection and I think there was a certificate at that time. I think her certificate was renewed.

Q. Look at these two papers which have marks upon them in blue pencil, 5 and 6, and state whether 1359
or not they are certificates of the Bureau Veritas as to the condition of the *Bourgogne* on the date that those certificates purport to have been made? A. I see that one of these documents is a certificate of a survey of her hull with the Veritas classification, first class, with the Maltese cross, signifying that she has been specially surveyed, and stating her seaworthiness.

The paper identified by the witness is marked for identification Petitioner's Exhibit No. 5 of this date.

1360 Q. You have another certificate from the Bureau Veritas? A. This certificate numbered 6 concerns the engine and boilers, and states that at the date this certificate was given her engines and machinery were in good working order.

Mr. Benedict moves to strike out all the testimony of the witness as to the contents of papers on the ground that the papers are the best evidence.

The paper identified by the witness is marked For Identification Petitioner's Ex. No. 6 of this date.

1361 Q. I hand you another paper and ask you to state generally what that is.

Mr. Benedict objects to the question; the paper itself is the best evidence.

A. This is not among my functions, as this document doesn't concern any part of my position.

Q. State what it is. A. It is a certificate of the surveyors—it is the admiralty survey—which states that that vessel is furnished with all outfitting and that everything can be found in good shape; that she is provided with everything that is necessary for the voyage she is about to undertake. This report of survey preceded immediately the de-
1362 parture of the ship from Havre.

Q. On her last voyage? A. Yes; it is dated the 15th of June, 1898.

Mr. Benedict moves to strike out all testimony as to the contents of this paper.

It is marked For Identification Petitioner's Exhibit No. 7 of this date.

Q. State the appliances with which the *Bourgogne* was fitted for lowering her lifeboats and liferafts? A. One of the best known and widely used

systems. The boats were on chocks which could 1363
be upset on each side of the boat; there were davits to swing them out as soon as they were clear of their chocks. This applies only to the boats. For the rafts, they were put upon a sort of gallows frame rigged before them so that you only had to push them off right into the water; they were easily got overboard.

Q. State whether or not this lifeboat-lowering apparatus that you have referred to was that which was generally or ordinarily in use by steamships of the first class like the *Bourgogne?* A. So far as I know, it was.

Q. Did you, at the time the *Bourgogne* sailed on 1364
her last voyage from Havre, know of any better or more approved system of lowering lifeboats or life-rafts, generally accepted and in general use, than those with which the *Bourgogne* was provided?

Objected to as leading.

Q. State whether or not at the time the *Bourgogne* sailed on her last voyage from Havre you knew of any better or more approved system of lowering lifeboats and life-rafts, generally accepted and in general use, than those with which the *Bourgogne* was provided.

The same objection. 1365

A. I did not.

Q. Did you at any time prior to the last voyage of the *Bourgogne* witness any maneuvres of lowering her lifeboats and shipping her life-rafts. A. I did. I saw some made before the commission which was deciding whether the ship was acceptable or not, as that commission specially demanded that this should be done without any previous preparation. And the commission declared themselves in my presence as being very much satisfied.

1366 Q. As chief engineer of the company at that time you had nothing to do with the armament of the ship, had you, ordinarily so called? A. No.

Q. I mean by that the management of her captain, officers and crew, and her general outfitting? A. No; that doesn't enter into my functions.

CROSS-EXAMINED BY MR. BENEDICT:

Q. This upper plan on Petitioner's Exhibit No. 1 is a plan of the mid-section of the ship along the keel, is it not? A. It is the length of the ship, following the axis of the ship, the keel.

Q. How many decks had the ship? A. Four
1367 decks. This question of the number of decks depends upon how that is regarded in different countries; one would be called a four-decked ship in one country which wouldn't be considered so in another. For us that is a four-decked ship.

Q. Are these bulkheads shown on this plan of which you have spoken by the dark lines and the words "Cln etanche?" A. Yes.

Q. Are those bulkheads all of the same height? A. No; some of them go higher up than others.

Q. Which ones are the least high? A. No. 4, according to the plan—I am not able to say that bulkhead No. 4 is not continued up higher than is shown
1368 upon the plan, because frequently that is the case; I can't guarantee as to that; it may be that it is higher; I am unable to say—No. 6 and No. 7; 8 and 9; these last two are what I have referred to as forming one bulkhead; 10 and 11. All this is according to the plan.

Q. What do you call the deck to which these lower bulkheads reach? A. The main deck.

Q. Were there no openings in those bulkheads? A. What do you mean by an opening?

Q. Do you mean to say you don't know what an opening in a bulkhead means? A. There may be a

pipe going through with a cock. Do you mean an opening by that? 1369

Q. I repeat the question. Were there any openings in those bulkheads? A. There are bulkheads with what is known as a sluice in them; there are bulkheads with an opening closed by a door; there may be some with piping and a cock.

Q. Do I understand that you have now described what these bulkheads were? A. Do I understand that you are asking me whether all the bulkheads had sluices and had doors?

Q. I ask you whether any of them had sluices and had doors? A. Yes; there were some that had doors and some that had sluices. 1370

Q. Which of them had doors? A. Those where it was judged necessary for the service of the ship; that is to say, those which separate the engine-room compartment from the tunnel, those which separate the boiler-room and the engine-room, those which separate the boiler-rooms from each other, those which separate the boiler-rooms from the coal bunkers.

Q. Can you give the numbers of those bulkheads as you have given them before? A. No. 5 for example. No. 5 separates the forward boiler compartment from the coal bunker. No. 6, which separates the two boiler compartments; 7 and 8, 1371 through which there is communication between the engine-room and the boiler compartment; 8 separates the shaft tunnel from the engine-room.

Q. All those that you have now mentioned had doors in them as I understand it? A. Had a door.

Q. Each one door? A. Yes; each bulkhead, one door.

Q. What was the size of the door, if you can tell? A. I can't remember.

Q. They are not marked on the plans? A. Not on these plans.

1372 Q. Do you know whereabouts in the ship from side to side and from the top to the bottom these doors were? A. About all in the middle of the ship, except perhaps the last bulkhead leading into the shaft tunnel, because the shaft is right in the middle of the ship, and the door would have to be on one side. I wish to make a reservation with regard to this last bulkhead, because my memory is a little weak with regard to it.

Q. How high from the bottom of the ship were the doors? A. The floor of the ship was raised up a little above the bottom of the keel. If we take the fire-room for example, this was right down on
1373 the floor, but the floor is of course up above the ballast tank.

Q. How about the height of it in the other places? A. In about all of them it was on a level with the floor. The doors were large enough to allow of a person going through without bending over much. I don't know the exact dimensions of the doors; I am speaking of "about."

Q. About high enough for a person to go through without stooping? A. Without stooping very much.

Q. And about how wide? A. I can't tell you exactly.

1374 Q. Did you ever see those doors? A. I have.

Q. Ever go through them? A. I have.

Q. Can't you tell, then, about how wide they were? A. Three and a half to four feet.

Q. Do you know how they could be fastened? A. Yes. These doors were moved by a mechanism which closed them. They were made to be watertight doors.

Q. Closed by a mechanism for each door or one mechanism for all? A. Each door had its own mechanism.

Q. What was necessary to be done to close the

door? A. You had to loosen the system and the door closed itself. 1375

Q. How did you loosen the system? A. It is not in my mind just at this moment. I have seen so many ships since that time. But the commission of which I have spoken just now examined thoroughly all these doors.

Mr. Benedict moves to strike out the latter part of the answer.

Q. When, before the *Bourgogne* sailed from Havre the last time, were you on board of her? A. The same day that she sailed.

Q. Did you go below to make any examination of her on that day? A. Between the time that she 1376
came in previous to her sailing and the time of her sailing I was on board several times and made different examinations. I can't say whether I did or not; possibly yes; possibly no.

Q. What did you examine when you, as you say, went below these different times? A. Whenever we go aboard we don't always examine everything in detail. We have to trust a little to the people on board and ask them whether there is anything going wrong that requires examination.

Q. And is that all that you can tell us of your examination on this occasion? A. There is generally a memorandum drawn up of things which 1377
require to be looked into which is handed to me, and I go aboard and look over the ship each time and see whether there is anything required; sometimes there is one thing and sometimes there is another that requires to be done.

Q. Did you receive on this occasion a list of things that you were to examine? A. Every voyage there was a list.

Q. (Repeated.) Did you receive on this occasion a list of things that you were to examine? A. Yes; a list of small things.

1378 Q. And did you examine those things? A. Yes, I did everything that was necessary to put the ship in good shape and remedy any defect.

Mr. Benedict moves to strike out the answer.

Q. Can you tell anything else that you examined except what was stated in the list? A. I am unable to recollect at this time what I did then.

Q. You have spoken of lifeboats and whaleboats. Tell us the difference in the construction between those two? A. We call lifeboats such as are provided with air-tight compartments, which I mentioned as air chambers; while a whaleboat is a
1379 special form of boat, but not having those air chambers; lighter and more easily handled than the others.

Q. But these whaleboats that were on the *Bourgogne* were not properly called lifeboats, were they? A. I think that according to American requirements they are considered lifeboats; they are counted with the lifeboats as having so much capacity for saving life.

Mr. Benedict moves to strike out the answer.

The Witness: It is a question of definition, according to the country.

1380 Q. My question is, do you call those whaleboats as included in the term lifeboats? A. What do you call a lifeboat?

Q. My question is what *you* call lifeboats? A. They are boats which are excellent to save people's lives. It is a question of definition. I don't wish to play upon words.

Q. Do you call those whaleboats which were on the *Bourgogne* lifeboats? A. We call them boats.

Q. Do you call them lifeboats? A. There are people who call them so.

Q. Do *you* call them so? A. I call the others 1381
lifeboats and I call these "*betcaux de sauvetage.*"

Q. Why did you call them *balcinieres* before? A. On account of their shape; they are a special form of boat.

Q. What is the difference between a lifeboat and a whaleboat? A. *Canot de sauvetage* is with me a special term; it is a word which includes whaleboats as well, according to my theory.

Q. Is there no difference between a whaleboat and a lifeboat? A. A whaleboat enters into the category of lifeboats.

Q. You have said that there was a commission, I understand, at one time which examined the boats. 1382
Did I understand you correctly? A. The one which examined the ship with regard to receiving her under the posta gulations; yes.

Q. How many as that commission composed of? A. Three.

Q. Do you know their names? A. Commandant Pradier; then there was a government engineer, a naval engineer, I think, Pluyette—the names that are signed on that certificate—he is an engineer of the French Navy; and Mr. Andree, the government representative or commissary. This commission only visited this ship after about a year of work which had been conducted under the special in- 1383
spection of Mr. Pluyette and his corps of assistants. This was the consecration of the work.

Mr. Benedict moves to strike out the latter part of the answer.

Q. Do you remember on what day this examination of boats was had? A. While the ship was making her trial trips. The trial trips covered two or three days. I don't mean to say that this commission examined every boat in detail and opened them to see whether they had air chambers,

1384 and all that thing. I mean that they tried the boats, looked them over, and had some of them put into the water.

Q. Do you remember on what day this examination of boats was had, from your own memory? A. I think it was the first part of March when the committee got together.

Q. Were you on board during all the time that that examination was being made? A. Yes, I was, at the time that they examined the boats.

Q. How long did that examination take? A. Perhaps an hour, perhaps half an hour; I can't say exactly.

1385 Q. How many boats were examined? A. What do you mean by the word examine?

Q. What do *you* mean by the word examine? You have used the word? A. They went all over the ship and I believe that they examined every one of them.

Q. Do you mean by that that every one of the boats was put in the water? A. No.

Q. How many boats were put in the water? A. My recollection is one or two.

Q. Were those two boats put in the water at the same time or one after the other? A. If there were two put into the water, one was put in after the other.

1386 Q. How long did it take to put one into the water? A. I didn't take notice; but very little time; I don't think over a minute.

Q. Were the tackles cast off? A. I don't think they went way down into the water; I think they were lowered down alongside of the ship.

Q. And the tackles not cast off? A. No; I don't think so.

Q. How many men did it take to put the boats in the water? A. I don't remember; probably the regulation number. It was in that sense that the examination was made.

Q. Do you know how many the regulation num- 1387
ber is? A. I can't recollect.

Q. Is it a dozen or half a dozen? A. I don't remember.

Q. It is more than one anyway, is it not? A. Yes.

Q. About how many? A. I don't recollect.

Q. Is there any particular name to the kind of lifeboats that they had on the *Bourgogne?* A. No.

Q. Do you know by whom they were manufactured? A. I think they were made in France.

Q. Do you know by whom? A. I don't.

Q. You have said that the *Bourgogne* was repaired at that time. What did those repairs con- 1388
sist of? A. You mean besides putting in new boilers?

Q. Including the boilers? A. The engine had originally been a compound and it was made a quadruple expansion. This is outside of the boilers. We went all over the piping of the engine. All the important parts of the engine were sent to the shop. As to the hull of the ship, she was cleaned out inside. She was tried and everything that required being made new was renewed, both as regards bulkheads and as to her water ballast. The forward part of the ship was strengthened as well as the after part of the ship, the stern. Everything that 1389
was worn or "tired out" was made new. As to the fittings of the ship with regard to taking passengers, etc., the general construction, it was pretty well made new. All the boats were sent to the shop. All their air chambers were taken out of them. The interiors of all the boats were scraped and painted, and the air-tight chambers were put back again into the boats. As these air cases were of copper, they were in general found in good shape.

Q. Is that all? A. Everything was repainted and the ship was put in general first class order.

1390 Q. Were there any new lifeboats furnished at that time? A. I do not think so. I think they were all carefully examined, as I have stated, and found in good condition.

Q. Were either of the whaleboats furnished new? A. No; I think not. I think we retained the old whaleboats. I think there were some life-saving rafts furnished new.

Q. How many new? A. I think they were all new; there were four of them.

Q. Can you describe the size of these rafts? A. It was some American system. I should think they were twenty to twenty-two feet long.

1391 Q. On which deck were those liferafts carried? A. They were at the same height as the lifeboats on the upper deck.

Q. Whereabouts on the deck fore and aft were they carried? A. They were aft on the promenade deck; at the after end of the promenade deck; they rested on bars aft in such a way that they could be got overboard very quickly.

Q. Were they fastened to the bars? A. They were made fast; they were secured with a small rope's end.

Q. How many rope's ends were there for each raft? A. I think they were made fast with a lash-

1392 ing at each of the four corners.

Q. What was the size of the lashing? A. As large as your little finger, perhaps; a small rope; like ratline stuff.

Q. Did you ever see those rafts put overboard? A. No; not those.

Q. Were you in Havre at the time of the loss of the *Bourgogne?* A. Yes.

Q. Were you there during the investigation that was had there by Commandant Dover? A. I wasn't connected with it.

Q. My question was whether you were in Havre?

A. I remained in Havre until March, 1900. I don't 1393
know just what the date of the investigation that you speak of was.

Q. Were you there during the month of July, 1898? A. I think I was.

Q. Were you present at any such investigation in reference to the loss of the *Bourgogne?* A. No, sir; I had nothing to do with it.

Q. You were not called as a witness? A. I was not.

Q. What employ are you in now? A. I am in the service of the docks and shops of Penhoet, where this ship was repaired.

Q. When did you leave the service of the Com- 1394
pagnie Generale? A. The 1st of August, 1900; I left Havre in the month of March and went to Penhoet, where I am now; but didn't leave the Compagnie Generale's service until August.

Q. How many trips did the *Bourgogne* make after the repairs that you have spoken of from Havre to New York and back? A. I think she made two, and that the one upon which she was lost was the third.

Q. Who was the commander of her on those voyages? A. I am giving from recollection merely now. I think the first voyage she was commanded by Capt. Santelli, the second voyage by Capt. De- 1395
loncle, and the third voyage upon which she was lost also.

Q. Did you ever see the engineer's logs of the *Bourgogne?* A. Do you mean any one log?

Q. Yes. A. I can't say; I hardly ever looked at the logs unless there was severe heavy damage to the engines. I don't think that any heavy damage to the engines ever occurred to the *Bourgogne* while I was in Havre. I don't think I ever saw the logbooks, because they wouldn't be handed to me.

Q. Did you ever see the engineer's logbooks of any of the other steamers? A. I have seen some.

1396 Q. Where did you see them? A. On board.

Q. Ever see any of them in the offices of the company ashore? A. No, not that I recollect. Those documents were entirely outside of my service; I had nothing to do with them.

Q. What was the material of which these bulkheads were composed? A. Steel.

Q. And what was their thickness? A. I can't tell you that. The plans of the ship were submitted to the government and satisfied the requirements.

Mr. Benedict moves to strike out the latter part of the answer.

1397 The Witness: I should have to have a plan of the ship to tell you that.

Q. These plans will not tell? A. No. Special plans which are examined by Veritas and other experts. These bulkheads were heavier than the bulkheads of some other ships of the line.

Q. Which other ships? A. The bulkheads of the *Bourgogne* and the *Gascogne*—their ironwork in a general way was very heavy. She and the *Gascogne* were built together and they were built very heavy.

Q. What was the difference, if you know, that they were heavier? How much heavier? What do
1398 you know about that? A. I can't give you the exact dimensions.

Q. How do you know they were heavier then? A. Because, having the same dimensions as some of the other vessels, they draw ten inches more water.

Q. How do you know that these bulkheads were heavier is the question? I mean the ship in general. I include the bulkheads in the general build of the ship.

Q. Is that the only knowledge that you have, or have you any particular knowledge about these

bulkheads? A. From time to time I have had the 1399
plans of the different ships in hand, and this is my general recollection on the subject. I have been all over the plans when I was in Havre, but I can't tell you the exact details of everything now; I have been over them and knew what they were.

Q. How many of these lifeboats were there on a side? A. There were twelve in all; six on each side; they were symmetrically arranged.

Q. You include in that the whaleboats as well as the lifeboats, do you not? A. Yes, sir; I put those in; I put in everything except the rafts which I don't call lifeboats.

Q. Whereabouts were the whaleboats? A. Just 1400
abaft the bridge, above the upper deck.

Q. Was the arrangement for putting them overboard the same as it was with the lifeboats? A. The whaleboats were always swung outside on their davits all ready to put into the water.

Q. And the lifeboats were not? A. The others were on their chocks.

Q. Had that been the arrangement always on the vessel, or was there any change in that system at any time? A. Yes; that had been the system.

Q. There had been no change in this system at any time, had there, for either the lifeboats or the whaleboats? A. Not so far as I know.

1401

REDIRECT BY MR. JONES:

Q. I omitted to ask you on the direct-examination of what material the hull of the *Bourgogne* was composed? A. Steel; steel plates.

I offer in evidence petitioner's Exhibit No. 4 for identification, of October 2d, 1901, which purports to be the report of the Commissioner in charge of the examination of the repairs to the steamship *La Bourgogne*, made the 5th of May, 1898 (page 1140). This is not a certified copy, but the witness said

1402 that it was a copy. If it is objected to for not being properly certified, I don't see how I can certify it in a way to make it strictly admissible evidence, but I will have it certified if I can do so before your Honor finally hears the argument.

Mr. Benedict asks to examine the report before objecting, and it is handed to him.

Mr. Jones also offers in evidence the certificate of the Bureau Veritas, petitioner's Exhibit 5 for identification, October 2d, 1901 (page 1150); another certificate of class at the Bureau Veritas, marked petitioner's Exhibit No. 6 for identification, October 2d, 1901 (page 1152);
1403 also a diagram of the ship, which is marked petitioner's Exhibit No. 3, October 2d, 1901; also another diagram, showing the ship, perpendicularly, marked petitioner's Exhibit No. 2, October 2d, 1901; also a diagram of the steamer, marked petitioner's Exhibit No. 1 of October 2d, 1901 (diagrams in original form accompany record); also a certificate of what the witness calls the Admiralty Survey on the vessel, which was marked for identification as petitioner's Exhibit No. 7, October 2d, 1901 (page 1153).

Mr. Benedict: I understand that I have a chance
1404 to object to these four exhibits. With reference to the testimony of Lannes it is proper that it should be stated that there is a dispute on the witness's own testimony as to the number of lifeboats; he stated first that there were ten lifeboats——

The Court: I don't care about details now.

Mr. Benedict: I call your Honor's attention to an order made by Judge Brown that the petitioner produce on or before the trial of this cause all logs kept by the steamer during the period of two years previous to the collision, and also all logs kept on any other steamer of the petitioner running between

Havre and New York at the same time of which the captain of the *Bourgogne* was then master, and I call for the production of those logs (page —). 1405

Mr. Jones: I have transmitted that order to the company, and here is the answer; we haven't the logs, and the reason is given in a letter which the agent has received from the company.

Mr. Benedict objects.

The Court: That is not evidence. The logs may be lost, and then you have got to prove it. You have got to put somebody on the stand to prove it, to testify.

The logs are not produced.

Mr. Jones offers in evidence certificate of the inspection of the Board of Supervising Inspectors appointed under the authority of the United States, showing the survey of *La Bourgogne*, under date of the 29th of March, 1898, and asks that it be marked Petitioner's Exhibit No. 8 (page 1156). 1406

Mr. Benedict: This is a certificate; the original is in this building, and I object to this certificate on the ground that the original is the best evidence.

The Court: Do I understand that you call for the original because the two papers are not alike?

Mr. Jones: I offer the paper in evidence. It is properly certified under the statute. 1407

The Court: I think this is competent under the statute. It is admitted, and marked.

PAUL SIMON, being duly sworn and examined, through an interpreter, testifies on behalf of the petitioner:

By Mr. Jones:

Q. What is your business? A. I am the marine captain of the Compagnie Transatlantique, superintendent.

1408 Q. What was your business at the time of the loss of the *Bourgogne* on the 4th of July, 1898? A. I was marine superintendent in Havre.

Q. What were your duties? A. I had charge of the crew of the vessel, of the outfitting in general, of her provisions, whatever concerned the ship in general, keeping order on board, in port, etc.

Q. What, if anything, did you have to do with the supervision of the commander and officers of the ship with respect to the navigation of the *Bourgogne* and other vessels of the company? A. It was my business to see whether the officers and seamen of the ship were suitable people for their
1409 employment.

Q. That included the captain and other officers of the ship? A. Yes; subject to the control of the administration. I wasn't head in Havre; I was the second.

Q. The head office of the company and the direction were and still are at Paris; were they not? A. Yes.

Q. Who, if any one, was the means of communication between the officers of the ship, so far as their personnel is concerned, so far as matters affecting navigation were concerned? A. Myself.

Q. Who was the commander of the *Bourgogne*
1410 when she was lost? A. Mr. Deloncle.

Q. Do you know his record previously as a commander? A. He was a lieutenant in the French Navy.

Q. How long had he been a commander in the service of the Compagnie Generale Transatlantique? A. About two years.

Q. Do you know how many voyages he made in the *Bourgogne?* A. I think three; I may not be absolutely exact as to those figures. I haven't an extraordinary memory.

Q. What were his qualifications for the post to

which he was assigned as commander of the *Bourgogne*, if you know? A. He was one of the best officers of the navy, like all the captains who come out of the French Navy. 1411

Q. Do you know anything about his qualities as a navigator, how he is esteemed as such? A. His qualifications were complete.

Q. It has been alleged in this proceeding that he had some infirmity of mind. Did you ever hear anything of that?

Mr. Benedict: That allegation was withdrawn.

Counsel present withdraw the allegations of such of the answer as charge infirmity of mind on the part of the commander of the *Bourgogne*. 1412

Q. Did you, as marine superintendent of the company, ever have any questions raised with you as to the proper character and competency of Commander Deloncle as a captain, in any respect? A. Never.

Q. As matter of fact, was he considered one of the very best captains in the company's service? A. He was one of the best commanders of the company.

Q. Now state whether or not there were any of the officers of the ship who were in any wise, within your knowledge, in any way incompetent for their posts? A. There were none incompetent; they were all competent, selected with care. 1413

Q. You have been in the French Navy yourself, have you not? A. I have; I have commanded ships myself.

Q. And if there was anything in the proper selection and maintenance of proper officers and crew of this vessel you would have known it, would you not? A. Certainly.

Q. Do you know anything about the condition of *La Bourgogne* with respect to lifeboats, life rafts,

1414 proper bulkheads, and other appliances for navigation? A. Yes.

Q. Describe her general outfit with respect to those matters? A. I can't give a detailed description; it is something enormous.

Q. Will you please take the plans, which are in evidence, and look them over and state—— A. The hull of the ship was divided by water-tight bulkheads, which are indicated on the plans; she had the necessary number of boats, as is shown by the plans; she had on board everything necessary to navigation. She had coal and food and engines.

Q. How many lifeboats did she have? A.

1415 Twelve.

Q. How many life rafts? A. Four.

Q. What was their general condition as to quality? A. Very good.

Q. State how long prior, if you know, to the loss of the *Bourgogne* in July, 1898, she had been completely overhauled? A. I don't recollect exactly; the engineer must have told you that; that didn't belong to my service.

Q. Can't you give us an idea of about how long? A short time? A. One or two voyages before.

Q. Do you know whether she went through the inspections required by law or by the custom of the

1416 company?

Objected to; inspections are not evidence.

The Court: It is admitted.

A. Yes.

Q. State whether or not she was inspected and to your knowledge passed by all the authorities, so far as survey and her general condition are concerned?

Objected to.

The Court: It is admitted.

A. Yes. 1417

Q. Can you state from any memoranda that you have, the total number of officers of the *Bourgogne?* A. There was a captain, a second captain, three lieutenants, two pursers, doctor, chief engineer, three first engineers, and four second engineers; sixteen in all.

Q. What was the total number of her crew, including petty officers? A. I think that the whole crew consisted of 225 men.

Q. Do you remember the fact of the disaster to the *Bourgogne?* A. Yes.

Q. How many of those in charge of her navigation survived, if you know? A. What do you mean 1418
by being in charge of her navigation?

Q. I mean officers in charge of her navigation. A. All the officers are dead, except two assistant engineers.

Q. They were all, as far as the report of the disaster came to the company, drowned in this disaster? A. They all died at their posts.

Q. On the 15th of May last a Judge of this court made an order for the production of the logbooks of the *Bourgogne*, and of any other vessel which had been commanded by Captain Deloncle. Please state, if you know, what the custom of disposition of logbooks is? 1419

Objected to.

Q. Do you know what became of the logbooks, to the best of your knowledge and information, that were on the *Bourgogne* at the time she was lost?

Objected to.

Q. Were any of the logbooks of *La Bourgogne*, that were on board of her at the time she was lost, ever returned to the company? A. No.

Q. Do you have any connection with the report of

413

1420 the voyage when your ships come in, and was that the fact in 1898, a paper called Rapport de mer? A. Yes.

Q. What means of information have you as to any event of the voyage from papers that come from the ship? A. The Rapport de mer serves for that purpose.

Q. Who draws that up? A. The captain.

Q. What paper do you rely upon for information, besides the Rapport de mer?

Objected to.

Q. What means of information do you have of
1421 the events of the voyage besides the Rapport de mer, if any? A. There are none; that suffices for all; it treats of all the questions.

Q. What do you do, if anything, with the log-books that come in at the end of the voyage?

Objected to. Question admitted.

A. We send them to the Centrale Administration, in Paris.

Q. Do you know what, if anything, is done with them in cases where no accident is reported, or anything occurs in the Rapport de mer, to call for their special observation or examination?

1422 Objected to. Question admitted.

A. They are put in the archives there in the office of the Centrale Administration, and are finally destroyed, the same as other useless papers.

Q. Is there any reason for their preservation in cases where no accident or special event has been reported, in what is called the Rapport de mer?

Objected to. Objection sustained.

Q. Do you know whether or not, or can you recollect whether or not your attention was called to anything in any of Captain Deloncle's logbooks, at any

time while he was in the service of the company? 1423
A. I have not remarked anything special. I have already said that he was one of the best of officers.

Q. Do you know whether or not any of the logbooks of the *Bourgogne* on previous voyages or any logbook of a voyage of Captain Deloncle's is preserved at this time in the archives of the company?

Objected to that the witness is not competent to say.

The Court: Haven't you got any better evidence?

Mr. Jones: I propose, with your Honor's permission, to read a letter from this company, which is in response to the order for the production of these 1424
books, as a preliminary for such proof as may be necessary to show the facts stated in this letter.

The letter is examined by counsel for respondents, and objected to.

Mr. Jones: I offer the letter for the purpose that I have stated, and I suppose I am strictly within the line of the law in reading it. This first letter is addressed to me by the General Agent here.

Mr. Jones reads the letter and offers it in evidence, as an explanation of the inability of the company to comply with the order.

The Court: It is hearsay; it is simply a letter. 1425

Mr. Jones: We don't offer the letter as proof; we offer it to show our inability to comply with the order. This is not a matter of evidence in this case. I simply say we have not got the logbooks and it seems to be proper for me to say in explanation why I don't produce them.

Mr. Benedict: If he takes the responsibility for not producing them I wish counsel would state it.

The Court: I don't think it is necessary that that letter should go in. I don't think it is admissible.

1426 It is time enough for you to stir yourself about the order when the Court asks some question about it. I don't admit the letter.

Recess.

EXAMINATION OF PAUL SIMON CONTINUED:

By Mr. Jones: Q. You said something about having an associate or some one connected with you in duties at Havre; who was that? A. There is a person at Havre called the agent, who is the head; the general head; after him comes the chiefs of the service, one of which I am.

1427 Q. In your service were you alone, or did you have any one there over you, or any one with you? A. I was chief of my service.

Q. Do you know whether any of the officers of this company and by that I mean officers of the corporation itself, were on the *Bourgogne* at the time of her loss? A. There were none on board.

Q. Do you know of any omission in any particular in the proper equipment, manning and otherwise fitting of the *Bourgogne*, so as to make her seaworthy on her last voyage from Havre?

Objected to. Admitted.

A. No.

1428

CROSS-EXAMINED BY MR. BENEDICT:

Q. Do you know whether all the boats on board of her were of the same construction? A. Yes.

Q. Were not two of them whale boats? A. Yes.

Q. You state that you think the crew was 225 men; does that include all the officers? A. Yes.

Q. What were the names of the two assistant engineers, who were saved? A. One was called Laisne, and the name of the other isn't present to my memory, but I think he is preesnt here in court; the last man in court.

Q. Is Mr. Laisne in court? A. Yes. 1429

Q. On the arrival of the steamers of the line in Havre to whom does the captain turn over the log of the voyage? A. He sends them to the office.

Q. To your office? A. Yes.

Q. Do you see them? Do they come to you personally? A. No, I don't look at them; I send them to the Administration at Paris.

Q. Do you ever see them after they go to the Administration at Paris? A. No.

Q. Have you any personal knowledge what is done with them in Paris? A. No.

Q. Did you ever examine Captain Deloncle's logbooks, or any of them? A. No. 1430

Q. Did you ever examine the logbooks of any other of the vessels besides those that Captain Deloncle examined? A. No; I take the logbooks and send them to the Centrale Administration.

Q. You don't examine them yourself? A. No, I don't examine them.

Q. Have you any personal knowledge as to what were the requirements of the law as to inspections of the vesel? A. No; I know that there is a government commission which examines the ships; but that doesn't belong to my service.

Q. Did I understand you to say that Captain Deloncle was at one time connected with the French Navy? A. Yes. 1431

Q. Was he not a Lieutenant of marines? A. No; he was a seaman.

Q. Did you have any personal knowledge of what charts were on board of the *Bourgogne* at the time of her last voyage? A. Yes.

Q. What charts did she have on board on the last voyage? A. There were both American and French charts.

Q. Can you specify, so as to give the list and the numbers of them? A. There were more than a hundred of them.

1432 Q. Is there anything on the diagrams that are here that shows what kind of boats there were on board? A. No; there is only indicated the place where the boats were.

Q. Do you know Captain Santelli? A. Yes.

Q. Where is he? A. In Havre.

REDIRECT-EXAMINATION BY MR. JONES:

Q. How long have you been navigator yourself? A. I was an officer during twenty-five years; commander of war vessels.

Q. State whether or not, in your capacity as marine superintendent of the company, you would
1433 have permitted the *Bourgogne* to depart on her last voyage without satisfying every requirement of all that was within your knowledge, and every requirement of inspection by any public officer?

Objected to. Excluded.

Q. State whether or not in the performance of your duties as marine superintendent you satisfied, as far as you know, every requirement of law with respect to the proper manning, equipment and outfit necessary to make *La Bourgogne* seaworthy on her last voyage from Havre to New York?

Objected to. Admitted.

1434

A. Yes.

Q. Do you know of any omission of any officer of the company of any duty with respect to the proper outfitting, manning and equipping of this vessel to make her seaworthy on her last voyage from Havre to New York?

Objected to. Admitted.

A. No.

RECROSS-EXAMINATION BY MR. BENEDICT: 1435

Q. Is it part of your business to familiarize yourself with the requirements of law in reference to the matter of equipment? A. Yes.

Q. Do you know what the requirements of law were with reference to the equipment of *La Bourgogne?* A. There is a confusion in the question; as we are postal ships the French Government requires of us to put a certain number of men on board of the ship; all those men were on board and all the requirements of the government were on board.

Q. Is that all you know about whether the requirements of law were complied with? A. Yes; I 1436
don't know what the law requires; I know what the government requires.

Q. Are the government requirements in writing or print? A. We must put on board a certain number of men; that is written; also for the outfitting of the ship there is a list of specificatinos which is executed literally.

Q. Specifications of what? A. The list of specifications is so long that I can't give it to you.

Q. It includes the provisions and coal, I suppose? A. Evidently.

Q. What else does it include? A. Everything that is necessary to render the navigation of that sort of a vessel possible. You have only to take 1437
the regular list, which is present here, which is called the Cahier des Charges.

Q. Did you have personal knowledge of the supplying of all the things that are mentioned in that list? A. Yes.

By Mr. Jones: Q. Were there any requirements of the company or of any public authority, outside of what is denominated here Cahier des Charges? A. It is possible that the specifications do not state in detail the items that are to be furnished to the

1438 ship; but there are inspectors outside who examine the ship as to those matters.

Q. (Repeated.) It is possible that the company puts on board more things than are required by the specifications?

Q. (Repeated.) Naturally; certainly; the list of specifications is a general one; there were other things required.

Mr. Jones: As I have only one other witness on this branch of the case and I am not able to produce him until to-morrow, as the company is getting off a large steamer to-day, and as I can take the testimony of the witnesses to the collision out of court,
1439 I would like to have the claimants proceed with their case, allowing me to call my other witness to-morrow.

Mr. Benedict objects.

The Court: There are two cases here, and when you go into court under your limitation of liability you may or may not raise both those questions. Mr. Jones has seen fit to raise them both, and he has seen fit to avail himself of both his legal rights in his petition. I take it that the duty of the claimant is to assume the burden of proof as to any claims that he may have, and that as to the limitation of liabil-
1440 ity the burden of proof is on Mr. Jones. Now I think he has discharged that.

Mr. Benedict: This is the first time that such a thing as this has been allowed. In all the cases that I have tried the petitioner has given his proof. While there is no question that at the outset the party has the choice of separating the question, when he brings up merely the question of limitation he concedes fault. I submit that he was charged, as against us, that he is free from fault, and we have denied it. When he offers no proof on that point then that issue should be taken against

him. I think that as to that issue which he has 1441
presented to us, which he has charged upon us and called upon us to answer, if he then declines to give any evidence upon it the only rule is that that issue is to be taken against him, and we are not called upon to give any evidence with reference to it. That certainly has been the practice; there never was a case that has been disposed of in this way. They are bound to prove their case that they have alleged.

Mr. Jones: If your Honor please, in this petition is the allegation that we have been charged by various persons who brought suit for negligence in that collision, and for losses; and all the matter in 1442
that petition that states the facts of the collision is mere inducement to the prayer to the Court to issue its injunction to restrain the prosecution of those suits, and its monitions to the parties to come in and establish them here; otherwise I can see that the propriety of bringing a proceeding of this kind with such a shifting of burden would be one that would seriously perplex counsel. In other words, if I am to go on and prove, as against these charges that I allege that these claimants have made in these cases affirmatively, the facts that I would use in defence to their suits, the whole burden of this litigation against which I am asking this Court's relief, would be shifted on me, and the stat- 1443
ute says that when I make the transfer it shall be a sufficient compliance with the provisions of that Act to give me a limitation of liability, provided these other statutory conditions are satisfied. Now the allegations as to the facts of the collision are mere inducement in effect to the real statement of the condition of this party's interests in this litigation.

The Court: I think that you are not required to make any such allegations, but simply to rest your

1444 case on your limitation of liability, and the only doubt that I have felt all the way through is that you have—if a party, however, chooses to assume the burden, then he is bound by it, and you have assumed it by way of all of the articles in your libel, except the sixth.

Mr. Jones: I have done that because the rule of the Supreme Court requires, as a condition to contest the claims that are made, that I shall state the facts of the collision.

Mr. Benedict: The petitioner has chosen to allege as against us that the *Bourgogne* was absolutely free from fault, and he asks a decree against us that
1445 your Honor should decide that the *Bourgogne* was free from fault absolutely. Now, for that purpose he made allegations in his libel, in order to sustain that prayer of his libel, which were allegations that the *Bourgogne* was entirely free from fault, and that this collision was by fault of the other vessel, which, if it were so, would entitle him to the decree against us of total exemption from liability; now when it comes to this position in the case it seems to me that he is now asking to exercise the option which he should have exercised in the beginning. If he wants to exercise that he must put us in the position where we would have been if he had exercised it in the beginning. Now he has presented
1446 to us this issue, and he asks the Court to give him a decree against us exempting the petitioner from all liability.

Now I say when he has made allegations and on those allegations based a certain prayer, that we are entitled to have him either give evidence in reference to those allegations, or abandon the prayer. And as I am quite sure that your Honor doesn't mean to change the practice in this case I say again that there never has been a case tried in which this position has been taken in this court; never.

Mr. Jones: As far as I know it has never been 1447
raised; but this is a peculiar case. We have been sued all over the country, and we are asking for relief against these suits, and we introduce this matter in here because, as a condition for contesting all liability, we have alleged the facts of the collision, and that is the reason those allegations are in there.

The Court: I feel especially embarrassed. I must frankly say that the cases which I have had in mind are two cases, in one of which I was counsel, and the other I heard. The sole purpose was to secure limitation of liability. I think I have been wrong. The rule provides that if the owners wish to contest 1448
the liability then they must set up these facts and circumstances under your rule. Now you have elected to ask for both remedies; you have elected to ask for both remedies, exemption and limitation. And you have therefore adopted, because you had a right to adopt, the other form, and say I don't care whose fault it was; we simply wish a limitation of liability, because we had neither privity nor knowledge. That you had a right to do, and not raise the other question at all; but you have claimed in addition, to have this exemption——

Mr. Jones: Those allegations are put in there for the purpose of contesting their case; that is what the rule says. 1449

The Court: No. "In the proceedings aforesaid "He shall be at liberty to contest his liability." If you contest the liability, then you elect to take both remedies; limitation and exemption.

Mr. Jones: Now it comes down to a question of order of proof. We are resisting.

The Court: And any persons claiming damages "may contest the right of the owner or owners," thus showing that the word is used on both sides. In other words, in the framing of this rule that word

1450 "contest" which I agree with you has a significance which you suggest, is used on both sides and for each person, showing that it is not used in that technical sense.

Mr. Jones: Then I go back to the condition of things that brings me into court. I say I want these cases tried here; I am charged with fault; my position there is one of resistance. It is one of contest, in which they have the burden of proof. Now certainly it can't be within reason, where objection is made as it is here, that I shall assume the burden of proving their case or disproving their case. That is exactly what it is. I must say very frankly that
1451 rather than proceed in this case with the burden of proof in it I would rather discontinue and go and try those cases—just see the position that I get in by taking a proceeding of this kind if that is the real rule of law.

The Court: I think that where the petition, as in this case, affirmatively alleges, and as the basis of the petition practically, all the facts and circumstances in the case, that that shows an election on the part of the petitioner to assume the burden, and that therefore the burden of proof is on him as to these allegations, if he proposes to insist upon them.

Mr. Jones: At the present moment I don't see anything to do but to submit to your Honor's ruling,
1452 but I except to it.

The petitioner excepts to the ruling of the Court that the burden of proof concerning the facts of this collision is upon the petitioner.

Exception allowed.

Mr. Jones: One of the quartermasters on the bridge, and probably one of the most important witnesses in the case, is absent and beyond our reach; he is in China. But there is an order of Judge Brown that I can avail myself of the testimony of this witness, and other witnesses, taken in

the English Court, and I offer in evidence the depo- 1453
sition of that witness, Louis Corré, which Mr. Benedict has in his possession, and which I call for, as his testimony in this case.

I offer in evidence, under the order of Judge Brown ,the deposition of Louis Corré, marked "A," of June 15th, 1901, as appears from the stenographer's minutes marked by Judge Brown, and taken in the High Court of Justice, Admiralty Division, between the owners of the *Cromartyshire,* which collided with the *Bourgogne*, and the Compagnie Transatlantique, and I ask that the copy of the stenographer's minutes marked by Judge Brown be placed upon file. 1454

The Court: I understand that it is offered in evidence, and therefore becomes a file of the Court.

Mr. Benedict: I offered all the depositions in evidence, and if counsel accepts the offer the whole bundle of papers goes in evidence.

Mr. Jones asks that only the deposition referred to, of Louis Carre, be marked, under the order of Judge Brown.

The Court: Let the whole bundle of papers be marked, with the understanding that only the part of them which comes under the order of Judge Brown is offered in evidence.

The paper is marked Petitioner's Exhibit 8 1455
of this date. (Pg. 418.)

EDOUARD LAISNE, being duly sworn and examined as a witness for the petitioner, through Capt. Stetson as interpreter, testifies:

By Mr. Jones: Q. What position did you occupy on the *Bourgogne?* A. Engineer; chief of the watch.

Q. Were you on duty at the time of the collision? A. No.

1456 Q. Where were you? A. I was in bed.

Q. Who beside yourself of the officers of the vessel survived the disaster? A. An apprentice engineer and one of the pursers—the second purser.

Q. The purser had nothing to do with the navigation of the vessel? A. No.

Q. Who of the officers above your grade, if any, survived? A. None; I am the only one.

Q. Do you remember when you last saw Capt. Deloncle? A. Yes.

Q. What first called your attention to the collision with the *Cromartyshire?* A. The rigging and the boats and other material of the ship which fell
1457 right over my cabin, which I could see.

Q. Where were you when this occurred? A. I was in bed.

Q. What clothing did you have on? A. I was undressed; I had my undershirt only.

Q. What time did this occur? A. At five o'clock.

Q. What did you do when you felt this crashing of debris in your room? A. I went immediately down to my post in the engine-room.

Q. Whom did you find there? A. The chief engineer.

Q. Who else? A. The engineer, the chief of the watch, was already gone into the fireroom forward.

Q. Anybody else? A. The whole watch; there
1458 were 27 men on duty at the moment of collision in the engine-room.

Q. They were all there? A. Yes; it is obligatory; nobody can leave his watch.

Q. Did any of those men survive the disaster or were they all drowned? A. Yes, a few of them survived.

Q. How many—in the engine-room I mean? A. Two or three perhaps; I don't know exactly; two or three.

Q. How far was your cabin situated from the 1459
engine? A. It was in the engine-room, inside.

Q. Do you know how the engines of *La Bourgogne* were running just before the collision?

Objected to on the ground that the witness says he was asleep.

The Court: Ask him whether he was asleep.

Q. At the time of the disaster were you awake or asleep? A. I was sleeping.

Q. How long in point of time do you think it was between the time that you were awakened and the time that you got in the engine-room? A. One minute or two at the most, instantly. 1460

Q. How long had you been asleep when you were awakened? A. I kept the watch from ten to two and I turned in at three o'clock in the morning; consequently I had been in bed two hours.

Q. Were you asleep during the whole of that time? A. Yes; from three to five.

Q. Did you notice whether when you were wakened the engines were in motion? A. When I got down in the engine-room the engines were stopped; when I got at the starting bar, the engine was stopped.

Q. Did you notice the stopping of the engines during the time that you were going down into the 1461
engine-room? A. No; I did not hear it.

Q. How did it appear to you? Did the engine appear to be in motion when you first waked up? A. I heard the steam in the pipes—I couldn't tell —there was a great deal of noise and I couldn't tell whether it was going slowly or whether it wasn't going at all.

Q. Then do I understand by your answer that it was either going slowly or entirely stopped?

Objected to.

1462 The Court: Ask him what he means by that answer.

Q. What do I understand when you say that you don't know whether it was entirely stopped or going? A. When I went out of my room the engine was completely stopped.

Q. How was it before that, as far as you can recollect? A. I cannot say. I was asleep before that and I can't tell how many turns she was making.

(The rest of the answer was stricken out by order of the Court.)

Q. Go on in your own way and state what was
1463 said and done and what you saw after you got into the engineroom?

Mr. Benedict: Objected to on the ground that he may tell what he saw, but as to conversations I object.

The Court: Ask him to state what occurred.

Q. What occurred after you got into the engine-room. State in your own way? A. As soon as I got into the engine-room I was sent into the fire-room by the chief engineer. There I noticed that on the starboard side of the fireroom forward the water was coming in in large quantities; the men were occupied in closing the water-tight bulkheads.
1464 Unfortunately the ship had taken a list to starboard right away and the fires had been put out. The compartment of the after fireroom was broken in as well as the engine room. I helped start the pumps below as well as the pumps in the fireroom. We remained in that position during a few minutes, but as the fires on the starboard side had just been put out and the water was coming in on that side and filling the engine-room, we were obliged to evacuate very quickly. Then the chief engineer gave us orders to get out. We had water up to

above our knees at that time. I went up on deck. 1465
I had to get out through the engine room skylight, because the water was coming in through the doors on the starboard side. When I got up I came out through the skylight and there were four life rafts, two on the starboard side and two on the port side. I managed by being assisted by two men to capsize two of them and get them overboard. I jumped overboard and swam to one of them and got hold of it and managed to go on to it. I think 15 other men got alongside the sailing vessel with those rafts.

I would like to explain—when I said I was persuaded that the engine was going at the speed mentioned in a former question, when I got down into 1466
the engine-room the safety valves had not yet been filled; they were still down. The steam was not able to get out through the safety valves. When the safety valve opens it makes an awful noise that is heard throughout all the ship. Therefore if I went down immediately after the engines had stopped and these safety valves were not working, there must have been a very weak pressure of steam at that time.

Objected to as a conclusion.

The Court: I think the witness is an expert, and I will admit it. Exception.

1467

The Witness (Continuing): The pressure might have been high, but there might have been very little steam, and as a matter of fact if that engine had been stopped suddenly the steam would have been forced into the pipes and obliged to blow off through the safety valves; which proves to me that the engine must have been going very slow previously—that it hadn't been stopped suddenly. There might have been a high pressure in the fireroom without the engines going at full speed as well. There

1468 might have been the maximum pressure of speed without the engines going at full speed.

I wish to explain that no engineer would run an engine with less than 10 kilos of pressure; whereas he is obliged to go at full steam in backing if he gets that order, and on board the *Bourgogne* with 10 kilos pressure that would give 30 turns of the screw.

Q. What was the maximum number of turns of the screw of the *Bourgogne?* A. 63 maximum at full speed.

Q. Did you see the extent of the *Bourgogne's* injuries on her starboard side? A. In some places; I
1469 saw principally in the fireroom; the water was coming in in several places, but I couldn't see them all.

Q. Did you observe into how many compartments the water was coming in? A. Four. In one of them I noticed there was a plate which was bent outward in the engine-room.

Q. Did you notice about the place at which the *Bourgogne* was injured in her forward part? A. The first rupture in the side of the ship was about opposite the fifth compartment abaft the fourth water tight bulkhead in the forward fireroom.

Q. About what was the length of the injury to the *Bourgogne* on her starboard side? A. About 40
1470 metres, broken in in several places, which were separated from each other.

Q. Did you notice whether any lifeboats had been damaged or crushed by the collision? A. I can't say much about that. I didn't notice on that side. There must have been some destroyed because the davits were torn out.

Q. There were no injuries to the other side of the ship, the port side? A. No; nothing at all.

Q. You have spoken of the ship taking a list to starboard. About how much of a list did she take?

A. At the last moment she had 40 degrees list. At 1471
the last moment, just before disappearing, she had a list of 40 degrees.

Q. Did you notice any efforts to lower the lifeboats on the port side or on the starboard side? A. Yes; the whole crew was around there; all the officers were there, for that matter I saw them when I got up; I saw them at a glance.

Q. Was there any difficulty in getting them overboard? A. It was not possible to get them out on the port side; all their efforts were vain.

Q. For what reason? A. On account of the heavy list of the ship. Everybody on the ship rushed there and hindered the crew from getting at the 1472
boats and working them.

Q. What was the general condition of things on the deck? Describe it in your own way? A. There were men who were trying to do something there; their efforts were vain, because there was no way of getting those davits turned outward so they could swing the boats out, and all the passengers were on that side together. There was nobody on the starboard side.

Q. Any excitement about the passengers? A. Not at that moment I didn't notice especially. There were three starboard boats that we were able to get into the water; three on the starboard side. The officers got one of them overboard and she was full of 1473
passengers and got her into the water and the funnel fell down on her and crushed her. Lifeboat No. 9 was taken by a dozen passengers, who cleared out with the boat. Lifeboat No. 11 saved 57 people. From the raft where I was I saw boat No. 9 taken by these people, who cleared out with it. I made them calls to come and let me take charge of it, and they refused and cleared out.

Q. What was the last you saw of the *Bourgogne?* A. She went down by the stern and her bow went down last.

1474 Q. Did you see her sink? A. Yes, sir.

Q. About how long after the collision was this? A. About half an hour at the most.

Q. What was the condition of the weather when you came up on deck? A. It was foggy. You could hardly see anything—a very thick fog.

Adjourned to to-morrow, Thursday, October 10, 1901, at 11 A. M.

NEW YORK, October 10, 1901.

Met pursuant to adjournment, same parties being present as heretofore noted.

1475 Mr. Jones: There seems to be a misunderstanding here as to the paper marked "A." My understanding is that I accept the depositions taken in behalf of the petitioner in accordance with the order.

The Court: I understood that that order was disposed of by the order of Judge Brown, and whatever that order says is what we understand.

Mr. Benedict: The order was that counsel had leave to accept my offer.

The Court: This order is on file, and I understand that you accept whatever is specified in this order of Judge Brown.

Mr. Benedict: Your Honor will remember that
1476 yesterday afternoon, when this matter was up, I said if you take my offer you will put these depositions all in.

The Court: I do not wish to hear any discussion. I want you to go on with your examination of witnesses, and if there is any question about this I will rule on it at the time of the argument. You can have any exceptions you choose. I don't accept anything except what is covered by Judge Brown's order.

Mr. Jones: I accept the depositions in accordance 1477
with the order of Judge Brown.

The Court: I will hear you on that when you come to argue the case.

Mr. Benedict: Your Honor will understand that these depositions was put in by counsel on the other side, and they were marked Petitioner's Exhibit 8.

The Court: I will not hear any further discussions on this point now.

The Court: Counsel for the petitioner files the copy of the testimony and depositions in the English Court, marked "A," given by witnesses in behalf of the petitioner. 1478

Mr. Jones: I understand that the counsel on the other side has no objection to the admission of the papers I offered in evidence yesterday.

No objection being made, they are marked in evidence Petitioner's Exhibits 9, 10, 11, 12 and 13 of this date, respectively.

EXAMINATION OF EDOUARD LAISNE CONTINUED:

By Mr. Jones:

Q. What speed, if you know, would thirty turns 1479
of the screw of *La Bourgogne* make? A. I can't estimate that speed.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Were you fourth engineer on the *Bourgogne?* A. Yes.

Q. Were you examined as a witness before the English Court in the trial of the case between the owners of the *Cromartyshire* and the owners of the *Bourgogne?* A. Yes.

Q. Have you, since that time, read or heard read

1480 the testimony which you gave on that occasion? A. No.

Q. Was there an examination in Havre in reference to the occurrences of the collision, before Commander Aubert? A. Yes.

Q. Were you examined as a witness at that time? A. Yes.

Q. Have you read, or heard read, since that time, the testimony which you gave on that examination? A. No.

Q. You have said that several of the men in the engine or fire room were saved; do you remember how many? A. I do not; I cannot give you the
1481 exact number.

Q. Can you give me the names of any of them? A. Yes.

Q. Give them? A. One named Fortin.

Q. Who was he; what was he? A. He was a fireman; one named Calvary, a fireman; another man named Pironnec; he was a coal heaver; there was an oiler named Bernard; one named Guegan, of the first class, fireman; another named Lejean, a first-class fireman; the other names escape me at this moment; I know them when I see them; but I don't recollect their names.

Q. Are any of them here present? A. Yes.

Q. Which? A. Calvary, Fortin and Pironnec.

1482 Q. Was there not an assistant engineer by the name of Labourch? A. Yes.

Q. He was saved also, was he not? A. He was the only one who was saved; the only assistant engineer who was saved.

Q. Is he here? A. No, he is not here.

Q. You said yesterday that when you waked up you heard the steam in the pipes, and there was a great deal of noise; was there any noise beside the noise of the steam? A. I said yesterday that when I was waked up I heard the noise made by the

davits and debris which had been broken off by the bowsprit of the other ship; but there was no other noise below. 1483

Q. When you went into the engine room who was there? A. My room is—the door is in the engine room itself; I have to go down perhaps twenty steps to go from my room down to the floor where the starting bar of the engine is, and at that moment when I got there the chief engineer had gone down into the engine room and was at the starting bar at his post, for manœuvring. The engineer who had charge of the watch was there and had just gone forward into the fire room, he was the third engineer. 1484

Mr. Benedict asks that the witness be instructed to answer the question exactly, and nothing else, and repeats the question.

A. There was the whole watch entire, there in the engine room, besides those who had gone down there. The whole watch was composed of 27 persons.

Mr. Benedict: My question was who was in the engine room.

Mr. Jones: He has answered it.

Q. Who was in the engine room when you got there? A. The chief engineer, an assistant engineer named Aglon; he is dead. Two oilers; an electrician who had charge of the bunkers, another bunkerman who was an oiler as well; a fireman who assists in manœuvring as well. 1485

Q. Were any of those people who were in the engine room at that time saved, except yourself? A. There was one coal heaver saved I think; I am not sure; I think the coal heaver was saved, but I am not sure whether he was or not.

Q. Do you know his name? A. I recollect now

1486 there was a fireman that was saved, and not the coal heaver.

Q. Do you know his name? A. Calvary, I think.

Q. What order did you get when you went into the engine room? A. To see what was taking place and to go into the fire rooms and see whether the watertight bulkheads were closed.

Q. Did you go into the fire room? A. Yes.

Q. How far did you have to go? A. 25 meters; to go into the first fire room is only three meters.

Q. On the *Bourgogne* were the water tight bulkheads closed from the fire room? A. Yes; we closed them every day to try them; we did it as an exercise
1487 every day.

Mr. Jones: I think the general instructions should be given to the interpreter to give the whole answer of the witness.

The Court: Yes, even though it may not be responsive, give it all.

Q. How many men were required to close all the open ports in all the bulkheads in the ship? A. I can only reply as to those bulkheads which are immediately in the neighborhood of the engine room; I have nothing to do with the other bulkheads.

Q. How many of those bulkheads were there? A.
1488 Four.

Q. How many men did it take to close those bulkheads? A. One person to each bulkhead.

Q. At the time when you went in the fire room were there four men engaged in closing the bulkheads? A. Yes, only one bulkhead in the engine room; the others are in the fire room.

Q. At the time you went into the fire room how many men were engaged in closing the bulkheads there? A. One or two; I don't know; they were closing the bulkheads.

Q. You didn't give any order with reference to 1489
the closing of them, did you? A. No; I have no orders to give; that concerns the chief engineer.

Q. How soon did you leave the fire room, going up on deck? You have said that you went from the fire room into the engine room; how soon after that did you go on deck? A. Fifteen minutes; a quarter of an hour; about twenty minutes after the collision.

Q. What were you doing during that fifteen minutes? A. I was getting the pumps going.

Q. How long did you stay in the fire room before you went back into the engine room? A. Perhaps thirty seconds. 1490

Q. After you went on deck did you go back into the engine or fire room again? A. Yes, I went down into the fire room again.

Q. When you went up the first time were you not sent there with an order to the captain, or a message to the captain? A. Yes; at once.

Q. Was not that message that the water was coming in below? A. No; to tell him that the plates of the ship had been torn in the forward fire room, and that the water was coming in.

Q. That was fifteen or twenty minutes after you first came out of your room? A. No; that was about three or four minutes after I came out of my room. 1491

Q. Haven't you just said that it was fifteen or twenty minutes after you returned into the engine room before you went on deck? A. I said that it was fifteen or twenty minutes when I abandoned the engine room.

Q. How many times did you return to the engine room from the deck before you left it the last time? A. Twice.

Q. Did you not say, when you were examined in the English court, that you returned three times?

1492 A. Yes, I did; I went up once into a compartment, but not entirely up on deck, and I did go down from there.

Q. What did you go there for? A. Because the small boilers were up there, and I went up there to see if the fires could be started on them.

Q. Was it after the last time that you went on deck that you went to these rafts that you speak of? A. Yes.

Q. How many rafts did you find there when you went there? A. Four.

Q. No effort had been made to move those rafts before you got there? A. No; they were there;
1493 they had remained there.

Q. When did you first notice that the ship had a list? A. Right off after the collision; five minutes after.

Q. How long was that before you went to the captain to tell him that the water was coming in below; or was it after? A. At once; after.

Q. In the engine of the *Bourgogne* was there not an apparatus which we call a governor, to regulate the steam from the boilers into the cylinders? A. No, there was not.

Q. Do you mean to say that the steam went directly from the boilers into the cylinders? A. There was a valve, but not a governor; it has arms.
1494

Q. Does the valve work automatically, or is it worked by hand? A. Yes, there is what we call a register; it lets the steam in.

Q. It works automatically? A. No, it does not.

Q. Do you mean to say that the pressure of the steam in the boiler goes directly into the cylinder unless it is turned off by hand? A. I do; the register is the throttle valve.

Q. You said yesterday that no engineer would run with less than ten kilos of pressure, because he might get an order to go back, and would be obliged

to go at full speed if he got such an order, and ten kilos would enable the engineer to give full speed in backing? A. He might back with nine as well as with ten; within one kilo wouldn't make any difference. 1495

Q. But one kilo would make a very slight difference in the number of turns of the engine? A. Yes; two kilos would make very little difference.

Q. And the engineer could go with full speed back with two kilos less? A. Yes; with nine and a half kilos he could go full speed astern.

Q. On which side of the *Bourgogne* did you put off those rafts which you put off? A. There were two of them; on the port side. 1496

Q. That left two in their places? A. It left two on the port side; the starboard rafts were the ones that we got overboard.

Q. Then you got them over on the starboard side? A. The two starboard rafts were got over on the starboard side.

Q. Those were the two that you got over? A. Yes; not alone, but with the help of men.

Q. As soon as they got over I understand you to say that you jumped overboard and got on board the raft? A. Yes; after swimming.

Q. About how many persons were on that raft? A. Twelve, thirteen or fourteen; I don't recollect exactly; the two rafts were together, and people got up and got off; they were changing. 1497

Q. Can you tell how many were on the other rafts? A. I don't know, because one of the boats took off the people who were on that raft.

Q. Was there any other officer present at the place of those rafts besides yourself? A. Yes; the assistant engineer, who was saved.

Q. That is the only one? A. Yes.

Q. That was this man Lebourch? A. Yes, sir.

1498 Q. Was Lebourch on watch at the time of the collision? A. No.

Q. When the ship began to list she listed over continually, more and more gradually, did she not? A. Yes.

Q. You have said that when you went up you went to those rafts, and you, with others, got the two rafts over on the starboard side? A. Yes.

Q. Were you on the port side at any time? A. Yes, I was.

Q. When? A. I came out on the port side, through the skylight, on the port side, and then went over on the starboard side.

1499 Q. Did you see any officers when you came out on the port side? A. Yes, on deck.

Q. Who? A. Mr. Delache, the third lieutenant; I can't recollect the names just at the moment; they escape me; Mr. Rempler was there; he was the second lieutenant.

Q. You said, when you were examined before the English court, that you heard the first blast of the siren a few minutes before midnight; was that correct? A. Yes.

Q. You were on watch at that time in the engine room? A. Yes.

Q. The vessel, you said, was going at full speed
1500 then; was that correct? A. Yes.

Q. You said also that you got no order to reduce speed during your watch; was that correct? A. Yes, I said that I heard two blasts of the siren about a quarter of an hour apart, at least.

Q. You said that your engine was going at that time about sixty to sixty-one revolutions; is that correct? A. Yes, sir.

Q. You are not able to tell us how much rate of speed that gives? A. Somewhere around sixteen knots.

Q. You said before that you could not tell how

much thirty revolutions could give; can you tell 1501
any better about the sixty? A. Yes; with the ship loaded as she was, that don't give her more than sixteen knots.

Q. Do you know what the pitch of her screw was? A. I knew what the old one was, but the screw had been changed; I am not sure of the one that we were using then; I haven't those figures in my head at this moment.

Q. Was it not the custom on the *Bourgogne* to put up at noon a statement of the distance that the ship had made during the previous twenty-four hours? A. No; it was given out to the passengers, but not to us. 1502

Q. Wasn't it posted, put up where everybody could see it? A. Yes; it was put up where the passengers were; we don't go there.

Q. Do you know what amount was posted on the noon of the day before this disaster? A. Yes.

Q. What was it? A. Three hundred and sixty odd miles.

Q. Is that as near as you can give it? I want you to be as accurate as you can? A. It is three years ago; it was 360 odd miles, within a mile or two; I don't recollect exactly.

Q. Did you see it posted? A. No; I have been told that that was the distance that had been run. 1503

Q. Who told you? A. I don't know; we always speak of the distance run on board the ship; I don't know who told me.

Q. After you got on board the *Cromartyshire* you were taken off from her by the *Grecian*, were you not? A. Yes, sir.

Q. Do you remember Mr. Cammeau here, as being one of the passengers on the *Bourgogne?*

Objected to as immaterial.

The Court: I don't know what the object is. If this be for the purpose of contradicting the witness

1504 hereafter in a material matter it is his duty to call his attention to it. It is admissible; the question as to how much weight it will have is another question. This is introductory.

Mr. Jones: If it is only on the line you speak of I will not object.

A. Yes.

Q. Did you not have a conversation with Mr. Cammeau on board the *Grecian* in reference to the speed of the *Bourgogne?* A. No.

Q. Did you not state to Mr. Cammeau, in a conversation on board the *Grecian,* in the presence of the captain of the *Grecian,* that the *Bourgogne* was
1505 running at full speed?

Mr. Jones: This company certainly is not bound by the declaration.

The Court: This question is asked to show that this man made certain statements. The question now is for the purpose of contradicting him and showing that he has made inconsistent statements, and even if the question were answered he says he didn't have any conversation. The question is, has he not made a certain statement to some one which they propose hereafter to prove? I must admit that, or there would be no foundation laid.

1506 Mr. Jones: The point is just this: the declarations of a mere employee—here is a corporation that has met with a terrific disaster and naturally every one trying to attack it will do everything possible.

The Court: I will hear you fully when that question comes up; but that is not the question here. It is a laying of a foundation.

Q. (Repeated.) A. No; I never met Mr. Cammeau in the presence of the captain of the *Grecian;* never.

Q. I call your attention to another gentleman. Wasn't this gentleman present at a conversation

between you and Mr. Cammeau, on board the *Grecian* (indicating Mr. Delfonte)? A. I think it is the first time that I have ever seen this gentleman; I don't speak a word of English. 1507

REDIRECT-EXAMINATION BY MR. JONES:

Q. State the rule and custom of the engineer that was observed in the engine room when the siren was sounded, indicating fog?

Mr. Benedict objects to the question of the rule and custom as immaterial.

The Court: I thought our Court of Appeals in this circuit had ruled very recently that it was proper to take the rule or custom; I will take the question. 1508

A. We always made arrangements to slow down, and we always notify the men to get ready to close the water-tight bulkheads in case order is given, and to be ready generally for any order that might follow.

Q. Are those precautions taken with or without direct order from the bridge? A. Without direct orders from the bridge; those precautions are taken as soon as we hear the first blast of the siren.

Q. What do you mean by this statement in connection with your statement, in answer to Mr. Benedict's question, that ten kilos or less, one or two kilos less, would give the steamer full speed astern, in connection with your statement yesterday as follows: 1509

"I wish to explain that no engineer would run an engine with less than ten kilos of pressure; whereas he is obliged to go at full steam in backing if he gets that order, and on board the *Bourgogne* with ten kilos pressure that would give thirty turns of the screw."

1510 What did you mean? A. I didn't intend to say that. I intended to say that with ten kilos of pressure you could go just as well thirty turns as sixty. I said yesterday that the high pressure indicated didn't prove always the number of turns made by the engine.

Q. Then, if I understand you correctly, the *Bourgogne* had a sufficient head of steam to go full speed astern with ten kilos? A. Yes.

Q. Will you explain a little more fully, because I confess that I don't understand it, what you mean by the statements made in this paragraph:

Objected to, especially as the witness has al-
1511 ready been asked as to the material part of it; what he means.

The witness says if he is called upon to explain the statement he would like to make it over again, so that he can be understood.

The Court: If you will separate the statements, Mr. Jones, so as to give the witness all one subject-matter, you may ask. I will take it.

Q. I will begin over again, and read the following:

"The pressure might have been high, but there might have been very little steam, and
1512 as a matter of fact if that engine had been stopped suddenly the steam would have been forced into the pipes and obliged to blow off through the safety valves; which proves to me that the engine must have been going very slow previously—that it hadn't been stopped suddenly. There might have been a high pressure in the fire room without the engines going at full speed as well. There might have been the maximum pressure of speed without the engine going at full speed."

Mr. Benedict objects on the ground that that 1513
does not call for any explanation. It is perfectly clear and plain.

The Court: I will take it.

A. The words "in the pipes" were left out. I wished to say yesterday that high pressure of steam on the boilers didn't indicate that necessarily the engine was going at full speed, because she could be doing that with ten kilos of steam; and I said yesterday that if at the moment of the collision the safety valve of the engines were not blowing off it was a certain proof that the ship had been going at a reduced rate of speed; I can explain it easily.

Q. Well, please explain it. A. If the engine had 1514
been giving forth all its power the fires must have been at their greatest height for that purpose; therefore the production of steam would have been very great; if the engine is stopped instantly in such a case the expenditure of steam is immediately stopped, but the production of steam still continues; therefore the communication being closed between the boilers and the engine, if the safety valves which are placed upon the boilers don't work at that moment it is a necessary proof that the expenditure of steam from the engine at the moment of stopping was weak; it is a certain proof that the steam used by the engine must have been very 1515
feeble, because in stopping it suddenly like that it would have otherwise produced its effect upon the safety valve, and it is impossible that an engine should act otherwise.

Q. Do you know the number of kilos of pressure that the engine was under when you went into the engine room after the collision? A. I do not; I did not look at the gauge.

Q. I read this portion of your testimony, and that is the other branch of the question, and ask you if it correctly represents what you intended to say.

1516 Objected to that the same question has been asked with reference to the same part of the testimony and witness has said that he was not correctly reported.

The Court: You may ask it.

Mr. Jones: "I wish to explain that no engineer would run an engine with less than ten kilos of pressure; whereas he is obliged to go at full steam in backing if he gets that order, and on board the *Bourgogne* with ten kilos pressure that would give thirty turns of the screw."

1517 A. That isn't what I intended to say.

Q. Please state what you desired to say in that connection? A. I intended to say that with ten kilos we could make thirty turns just as well as we could make sixty.

Q. Is there any other qualification of that statement that you care to make? A. No; I only wanted to say that the engineer on the watch kept the steam pressure very high, so as to be able to give the maximum speed if it was called for.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You have said that when you heard the siren
1518 blowing the custom was to give orders to get ready in the engine room; then you wait until you get orders, do you not, before you take any action? A. Yes, we take precautions; we get ready and we take whatever precautions an engineer would usually take.

Q. And then wait until you get orders, do you not? A. Yes; and after taking these precautions we wait until we receive orders.

Q. And you have testified that you got no orders during your watch, have you not? A. I received no orders; it was clear weather.

Q. Your watch was from what time to what time? 1519
A. From ten o'clock until two o'clock in the morning.

Q. After twelve o'clock were you in charge of the engine? A. Yes, from midnight until two o'clock.

Q. You had charge of the engine all the while. Did you leave your post during that time? A. No.

The rest of the answer, on motion, is stricken out.

ANDRE DEPREZ, being duly sworn and examined, through the interpreter, as a witness for the petitioner, testifies: 1520

By Mr. Jones:

Q. What position did you occupy on the *Bourgogne* at the time of her collision with the *Cromartyshire?* A. Electrician.

Q. Where were you when the collision occurred? A. I was turned in.

Q. Were you asleep? A. Yes, I was asleep.

Q. What was the first that you knew of the collision? A. It was the shock of the vessels coming together that woke me up; the noises that I heard.

Q. What did you do when you noticed this shock? A. I dressed myself as quick as I could 1521
and went out of the door of the officers' quarters, where I found the chief engineer.

Q. How long do you think you were in dressing? A. Hardly one or two minutes.

Q. Were you partly dressed when you were aroused? A. No; I had a shirt on when I was waked.

Q. Describe what you saw after you went out and give your narrative in your own way. A. I found the chief engineer, who came out of his room,

1522 which was right alongside of mine, at the same instant; he asked what had happened. I said I think we have been run into, collided with. He immediately went down into the engine room and I followed him at once; I was right behind. I went to my post, which was the compartment where the electric machines were, the dynamos, in order to see that the electric lights didn't fail. While I was there I assisted at getting a pump going, and I didn't leave the engine room until order was given to let everybody save himself who can. When I went up on the deck I went out through the skylight with Mr. Laisne; we went together. We found the
1523 rafts there that we cast off lashings together from, and we threw two overboard and it was with those that we were saved. We also cut the lashings of the other two rafts, which were there, thinking that they could be used to save people with. I jumped overboard and finally managed to get on board of one of the rafts. When I jumped overboard the starboard side of the deck was already under the water. I didn't swim—I don't swim—and I didn't feel like jumping into the water, and I just got over the railing and got on to the raft; that is all.

Q. State whether or not you noticed any list of the ship in either direction, after the collision? A.
1524 Yes, while I had gone down below she had already taken a list.

Q. Can you describe how much? A. The list increased all the time. I am sure that the time I got off from the ship she had a list of at least forty degrees.

Q. Did you observe the extent of the *Bourgogne's* injuries? A. I know that she was broken in in four compartments.

Q. On which side? A. Starboard side.

Q. Did you notice whether any lifeboats on that side were broken? A. Yes; I know that the first

boat aft of the bridge was smashed, so that it 1525
couldn't be used. I was told that there were others that were broken, but I didn't see them.

Q. How were the lifeboats on the port side? A. When we came up through the skylight the lifeboats were all in their places, because they couldn't be swung out, even while they were on their chocks they were filled with passengers which prevented a great deal from getting them outboard.

Q. Did the list of the ship have anything to do with the difficulty in lowering the boats? A. Yes; instead of swinging outboard they had a tendency to swing inboard.

Q. What time did this collision take place, to the 1526
best of your recollection? A. Towards five o'clock in the morning.

Q. How was the weather when you went up on deck to save yourself? A. It was foggy.

Q. Very much fog? A. Yes, a good deal.

Q. Did you go on deck at all from the time of the collision until the time that you were notified to save yourself, among others? A. No, I remained below all the time.

Q. What is your best estimate of the interval between the collision and the time you went on deck to save yourself? A. I think I was below there about a quarter of an hour; from a quarter of an 1527
hour to twenty minutes at the most.

Q. Did you see what was done with the doors of the water-tight compartments after the collision? A. I didn't see, no; I heard the chief engineer give the order to close them.

Q. You didn't see them closed yourself? A. No.

CROSS-EXAMINED BY MR. BENEDICT:

Q. You have given an estimate of the time between the collision and the time you went on deck as about a quarter of an hour to twenty minutes.

1528 Did you see any time by a clock? A. No, I didn't amuse myself looking at a clock at that time.

Q. How long a time do you estimate between the collision and the sinking of the vessel? A. Twenty-five minutes to half an hour.

Q. When you came out you and Laisne went immediately to these rafts, I understand you? A. Yes.

Q. And you immediately put them over on the starboard side? A. No; we stopped a moment at those on the port side to think what we would do.

Q. And then you went to the starboard rafts and put them overboard immediately; is that it? A.
1529 We then said, on account of the list of the ship, let us try and see if we can get the starboard rafts overboard.

Q. And you put them over immediately? A. Yes; the two starboard ones we immediately put overboard.

Q. Were there any passengers that got on to these rafts, either of them? A. They didn't get up on top of the rafts, because they were up on a sort of framework.

Q. I mean, of course, after they were got in the water, was there any passengers got on those rafts? A. We picked up one passenger who was floating
1530 alongside, and I think there were some other passengers who got on, but I don't know who they were.

Q. Did you see the rafts on the other side got off at all? A. They went down with the ship; it was only after they came to the surface that people got on to them; after ship had sunk.

Q. Was there any particular place or boat that you were ordered to go to in case of disaster on board the *Bourgogne?* A. Yes; I had a place where I was understood to go as an engineer to save myself in case of accident.

Q. That wasn't my question. The question was 1531
whether there was any order as to what place you should go to in case of a disaster. Had you been assigned to a place? A. In case of accident I am supposed to be in the engine room; that is my post.

Q. (Repeated.) A. Yes; I belong to the crew of the boat?

Q. Of which boat? A. No. 10 on the port side.

Q. Did you go there at all? A. No; when we came up through the skylight we saw the boats that were there, and it was impossible to get them into the water, and I didn't go to my post there.

Q. Whereabouts was No. 10 boat? A. On the port side aft. 1532

Q. How far away from the skylight where you came out? A. About fifteen meters abaft the skylight, where I got out.

JACQUES DUFOUR, being duly sworn and examined as a witness for the petitioner, testifies (through the interpreter):

By Mr. Jones:

Q. What position did you occupy on the *Bourgogne?* A. I was one of the waiters.

Q. Do you remember having been called as a 1533
witness in the case of Henry Worts and others against the Compagnie Generale Transatlantique in the Circuit Court in this city some time ago? A. Three years ago, yes.

Q. You were called as a witness in behalf of the plaintiffs in that case? A. Yes.

Q. And you were examined by Mr. Benedict in behalf of the plaintiffs in those cases?

Mr. Benedict: I suggest that the deposition taken in my behalf should be put in, to save time.

1534 Mr. Jones: If Mr. Benedict will put the deposition in I will agree to it.

The Court: I think you had better proceed.

Q. Where were you at the time of the collision with the *Cromartyshire?* A. I was in bed at that time.

Q. Were you asleep? A. Yes.

Q. What called your attention to the accident? A. The shock and the noise that I heard up above.

Q. Where was your room? A. Way aft.

Q. What did you do after the collision? A. I went to my post in the cabin; we put ourselves at the disposal of the purser there to look after the
1535 passengers.

Q. Go on and state what took place? A. We waited for orders from the captain.

Q. What orders were given? A. The first were to close the water-tight doors which are on the sides of the saloon.

Q. What was done in pursuance of that order, if you know? A. We commenced to close these doors when we received orders to go up to our stations at the boats.

Q. Go on and state in your own way everything that you can recollect, without being specially questioned, that took place from the time that you were
1536 aroused until the sinking of the *Bourgogne?* A. When the first shock occurred and woke me up I got up; I ran to my post. We found the purser at his post in the saloon, and he told us that every one of us should get life preserve buoys and see that the passengers had them. We then got the passengers out on deck. We closed the water-tight doors and then we went to our positions at the boats. We then got out the starboard boats; so far as we could. While we were getting the passengers into the boats the funnel fell down and we had to stop and abandon the boat; the funnel fell on the boat at

which I was stationed. Then we went to another 1537
boat; it was boat No. 11. This No. 11 was already in the water; I jumped overboard and I was picked up by this boat, with fifty-seven people in all. We got separated a little way from the ship, because at that moment she was listed way over on her side, and within about ten minutes after that I saw her sink. A raft came alongside of us then, about that time, and picked up several passengers who were floating in the water. We made a turn or two around the raft and we let the boat drift then. About two hours after that we fell in with the *Cromartyshire*, which took us on board.

Q. What did you see of Captain Deloncle before 1538
the sinking of the *Bourgogne*? A. When we got the passengers out on deck Captain Deloncle was coming up from the engine room, and I met him there; and from there he went upon the bridge.

Q. Did you hear him give any orders? A. I didn't hear him personally give any orders; I merely met him as he came up from the engine room.

Q. Did you see him when on the bridge? A. Yes, I saw the second captain, Mr. Dupont; there were also the officers who were at their posts at the boats, where they were assigned.

Q. What became of Captain Deloncle and Cap- 1539
tain Dupont? A. I didn't see them after; we got out the boats, and I didn't see them again at all.

Q. Did you hear any orders given for the getting out of the lifeboats? A. There must have been orders given, but I didn't hear them; I was way aft.

Q. Did you notice whether the *Bourgogne* after the collision took a list one side or the other? A. Perhaps ten minutes after the collision she took a list.

Q. How much of a list? A. I couldn't tell exactly in degrees.

1540 Q. Was it very much of a list, when you say that? A. Yes, an enormous list.

Q. Did you notice the injuries of the *Bourgogne* by the *Cromartyshire?* A. Yes.

Q. Describe them in your own way? A. The ship was cut into for a depth of three meters I should think; because they met at nearly a right angle.

Q. How far aft did the injuries extend? A. She was run into almost head on; the *Cromartyshire* came into her almost head on.

Q. What I ask you is how far aft you saw the fracture of the hull of the *Bourgogne?* A. It might
1541 have been six meters.

Q. Not more than that? A. About three meters in the direction across, athwartships, and about six meters in length.

Recess.

Mr. Jones: If your Honor please, just a little bit apart from the ordinary line of testimony in this case, and in order that we may expedite the case as rapidly as possible, I wish to say that just as your Honor rose at recess a very silly performance was gone into by the service of a subpœna. The subpœna is to produce copies or translations of the
1542 depositions that were taken before Commander Aubert, who was wrecking commissioner in France, who made an investigation of this collision, and I wish to say to the counsel on the other side, now, that I have not a complete copy of those depositions; but I make this offer, and I make it now, because it will save time; I will consent to telegraph this afternoon to Havre to get a certified copy of all those depositions, together with a report of that commissioner, if that is what counsel on the other side desires. I certainly should refuse if I were called upon to produce any fragmentary testi-

mony of that kind, especially translations. Now if 1543
Mr. Benedict wants the result of that inquiry, and the depositions upon which it was founded, I am willing now to send a cablegram to Havre to get a certified copy of all those depositions and of the report of Commander Aubert, and I ask counsel on the other side if he wishes that to be done.

Mr. Benedict: All I wish to be done is that I wish the counsel to produce here in court the translations of the testimony of certain witnesses which he wrote to me that he had. If he will produced those in court I won't agree to put all of them in, but I agree that if they are here and if I examine any of them they may go in evidence. 1544

Mr. Jones: I don't want to shield myself behind privilege of counsel; I don't want any unfavorable impression to be made upon the Court. If all the depositions and the report of the wrecking commissioner, who was an officer in the navy and a man of very high class, are desired here for the instruction of the court, I am perfectly willing to produce them. I am not willing, however, to produce mere fragmentary testimony. I have not in my possession any of the French text of those depositions, and I am not sure that I have the translations of all of them. I have a few that were given to me by the counsel of the company in Paris last year, when I was there, and some that have been sent to me 1545
since, that seem to bear upon this inquiry, and I am not able to say that I have a complete set of the translations of those depositions; but I want to anticipate now any unfavorable impression that your Honor may get, if I go on the witness stand and claim the privilege of counsel in not disclosing the contents of papers that are in my possession. I am perfectly willing to furnish all that record in a properly certified form from the proper persons in Havre.

1546 Mr. Benedict: That is just the proposition that you made before, and I made my answer. I say this: If the counsel says he doesn't desire to raise any question as to the privilege of counsel, then he may treat that matter as a notice.

Mr. Jones: I state in my present situation I must give you notice in advance that I must avail myself of the privilege of counsel, and I don't want your Honor to understand that I concede anything. I will give counsel the whole thing. I will give him the whole record, or nothing. It can be had here in a week if Mr. Benedict wants it.

1547 CROSS-EXAMINED BY MR. BENEDICT:

Q. You were examined, you say, as a witness in another case in reference to this matter? A. Yes.

Q. You were examined in this building, were you not, upstairs? A. Yes, on the other side of the biulding I think it was.

Q. You intended to give true answers to the questions that were put to you then, did you not? A. Yes, the same as I am doing now.

Q. This question was put to you in that examination, "At what time did you go to bed?" You gave the answer, "I was on duty from one till three in the morning, and I turned in at three o'clock."

1548 Was that answer true? A. Yes.

Q. This question was put to you: "While you were on duty whereabouts were you on the ship?" and you made answer, "In the saloon; there was a very thick fog at the time." Is that true? A. Yes.

Q. The next question put to you was this: "Were you out on deck at any time during that period from one to three?" and you answered, "Yes, I was; I had no duty, up there, but I went up out of curiosity." Was that true? A. Yes; I got below at three o'clock.

Q. You were also asked this question: "When you

went up on deck during that period what was the 1549
weather?" and you answered "Very foggy." Was that true? A. Yes.

Q. Then you were asked, "Was the whistle of the *Bourgogne* being blown during that time?" and you answered, "The siren was being used." Was that the fact? A. Yes.

Q. You were also asked, "What time did they begin to blow the siren?" and you answered, "Just as soon as the fog began to get thick." Was that true? A. Exactly.

Q. You were asked, "Do you remember what hour that was?" and you answered, "No, I think the fog commenced from eleven o'clock till midnight, 1550
about." Is that true? A. Yes.

Q. You were asked, "When you left your watch at three o'clock where did you go?" and you answered, "I turned in." Was that true? A. Yes, that was exact.

Q. You were asked, "What was the weather at that time," meaning when you first came out on deck, and you answered, "The weather was still very thick, you could not see ten meters." Was that true? A. Yes.

Mr. Jones: I am not sure that your Honor understands the exact position of this witness. In the Circuit Court an action was brought on behalf of a 1551
number of claimants here, and this witness was called by Mr. Benedict, and examined by him, and this is his deposition. Of course by calling that witness in the Circuit Court he impliedly vouched for the probity of the witness. Here we are with this shifting around to the position where technically Mr. Benedict is cross-examining his own witness. Now I suggest that in fairness, without going into the question of rule, Mr. Benedict ought to offer that deposition in evidence here. He is really, in fact, cross-examining his own witness.

1552 He is asking him if he said so and so, and if it is true; a witness that he introduced in a court of justice, and vouched for. The latitude of counsel of cross-examination is a thing always within the discretion of the Court, and that discretion is never interfered with. I merely want your Honor to understand what has transpired with respect to this witness, and I don't propose to object to this line of examination if he wants to go into it; I merely want your Honor to know what has happened, and determine for himself whether it is proper cross-examination. I think it is a travesty of justice to permit Mr. Benedict the cross-examination of a wit-
1553 ness when in one of the cases in this court he has produced this witness and vouched for him as a truthful man, and now he is going on to try and discredit him.

Mr. Benedict: I am not trying to discredit him in the slightest.

Mr. Jones: The object of all cross-examination is to weaken the testimony.

The Court: I can't assume anything at present; I will see what comes.

Q. You were asked "How long after the collision did the vessel sink," and you answered "Thirty-five minutes." Was that the fact? A. Yes.

1554 Q. You also said "During those thirty-five minutes the engines did not turn over, because the captain went down below and was ascertaining the condition of the ship." Is that the fact? A. Yes.

Q. Also "How long was the captain below," and you answered "He stayed down there from a quarter of an hour to twenty minutes." Was that the fact? A. Yes.

Q. And you were asked "During those thirty-five minutes that the ship was still afloat whereabouts on the ship did you see Captain Deloncle," and you answered "I saw him when he came up from the

engine room, and he went up on the bridge." Is 1555
that the fact? A. Yes.

Q. You were asked "How long was that before she sank?" and you answered "She sank perhaps fifteen minutes after." Is that the fact? A. Yes.

Q. You were asked "How long, on the side of the ship, was the cut," and you answered "At least three meters long." Was that the fact? A. Yes; absolutely.

Q. You said this morning that the vessel had an enormous list; by that you mean she had that list at the time when she sank? A. Yes, the list didn't take place immediately upon the collision, the ship had to fill up first. 1556

Q. Did not the ship sink by the stern? A. She listed over to starboard.

Q. Didn't she sink by the stern? A. Yes; the stern went down first; she was heeled over to starboard.

Q. You stated that you got orders to close the cabin doors on the side. Were those doors closed all of them in accordance with that order? A. Yes; when I left the ship all the doors had been closed.

Q. How long did it take to close them? A. Perhaps ten minutes.

Q. Who else helped you at that? A. The one who helped me is dead.

Q. There was only one who helped you? A. We 1557
were three on each side closing the doors; I don't know who the other three were.

Q. How many doors did you have to close? A. At my post there were two doors; there are six doors in each side and each man had two doors to attend to. Aft there were other doors, and the chief of the service took care of those himself. There is a watertight bulkhead comes up there and two doors on each side of it, so that the saloon was completely closed.

1558 Q. This was the ladies' saloon, was it not? A. There is no watertight bulkheads in the ladies' saloon; no, it was not.

Q. What saloon was it? A. The place of the collision was in the ladies' saloon.

Q. What saloon was it where you closed these doors is my question? A. The water tight doors which are spoken of were right alongside of this saloon.

Q. Of the ladies' saloon? A. There is where the first class cabins are.

Q. Was that forward or aft of the place where the vessel struck? A. Forward.

1559

REDIRECT-EXAMINATION BY MR. JONES:

Q. In what you said about closing the doors do you mean the cabin doors or the saloon doors, or the bulkhead doors? A. I mean the water tight bulkheads; that is what I mean.

By Mr. Benedict:

Q. What you said was the water tight doors on the side of the saloon? A. The water-tight bulkheads of the iron doors, and those were what we closed.

1560

By Mr. Jones:

Q. Between what places, where were these doors that you speak of, were they athwartships or on the side of the ship? A. These doors were about two inches thick and they are athwartships.

Q. Do they close the passages that lead from the saloon forward or aft? A. Yes.

IVES LE BRIS, being duly sworn and examined as a witness for the petitioner, testifies through the interpreter): 1561

By Mr. Jones:

Q. What position did you ocupy on the *Bourgogne?* A. I was head topman.

Q. That is one of the superior lookouts, is it not? A. I am charged with the looking after the masts, etc.

Q. What is the difference between a topman and an ordinary sailor? A. A topman gets five francs more than the other man does; he is better posted. He knows how to work better than the others. 1562

Q. In a general expression he is a sailor higher than the ordinary class? A. Yes.

Q. Where were you when this collision occurred? A. I was washing the deck.

Q. Where were you? A. About ten meters abaft the place where the other vessel came into us.

Q. What was the condition of the weather at that time? A. A four or five-knot breeze; there was a swell on; it was foggy; you couldn't see at all.

Q. Do you know how fast the *Bourgogne* was going just prior to the collision? A. I can't tell you.

Q. Did you observe the movements of the engine at all? A. No. 1563

Q. Was the siren or fog horn being sounded? A. Yes; every ten or fifteen seconds.

Q. How long had that been going, about? A. All the time while there was fog.

Q. How long was that; give me your best recollection? A. I went on the watch at four o'clock, and from that time; I can't recollect before that; at any rate since four o'clock.

Q. What, if anything, first attracted your attention to the *Cromartyshire?* A. I heard a horn.

1564 Q. Did you hear more than one horn? A. One blast of the horn only.

Q. How long was that before the collision? A. Two or three seconds; almost at the moment that she came into us.

Q. Had you been on the deck some time prior to that time? A. Yes.

Q. About how long? A. Since four o'clock in the morning.

Q. Did you see the *Cromartyshire* before the collision? A. No.

Q. I understand you to say that you were on the side of the collision? A. Yes, on the starboard
1565 side.

Q. Can you describe about the angle of the collision?

The interpreter: The witness says he can describe the angle with his hands, but he can't tell exactly what it was.

The witness indicates about 45 degrees.

Q. Describe in your own way what damage the collision did? A. I can't tell you.

Q. Did you notice whether her whole starboard side was ripped open? A. I did; yes.

Q. Was it? A. Yes; without that she wouldn't have made so much water.

1566 Q. About what point was the first contact of the *Cromartyshire?* A. Right abreast the first-class saloon.

Q. Was that forward or amidships? A. A little forward of amidships.

Q. Did you see any damage to the *Bourgogne* towards the after part of the ship? A. No.

Q. Tel in your own way what else you know about what was done after the collision? A. I helped get out the starboard whale-boat, right away. We lowered away the whale-boat about level with the rail

and left it so. Then I went to my own lifeboat, No. 1567
8, which is on the port side, and we tried to get it out of the line of the side of the ship. We were unable to do so, because the ship was listed over too much. I then went back to the whale-boat and a little after she was lowered away into the water, and I was saved in her.

Q. Did you see anything of Captain Deloncle, or the second captain, Mr. Dupont, before the sinking of the vessel, on the bridge? A. I saw Captain Deloncle on the bridge, but I didn't see Mr. Dupont; Captain Deloncle was at his post.

CROSS-EXAMINED BY MR. BENEDICT: 1568

Q. Was anybody else with you when you went on deck? A. All the watch.

Q. That you say was about ten meters aft of where the blow struck? A. Yes, ten or fifteen meters.

Q. When the blow struck what did you do? A. We went out following the *Cromartyshire* along.

Q. How far forward of where you were standing was the nearest point of the break in the side of the ship? A. Ten meters or so.

Q. Could you tell how far forward of that the break was? A. I can't tell; there was so much fog I couldn't tell. 1569

Q. Who helped you, if anybody, get out the whale-boat? A. All the crew.

Q. How many? A. Six or seven.

Q. How long did it take you to swing out the whale-boat? A. To get it down level with the rail, about five minutes; it is easily handled.

Q. Then I understand you to say that you went to No. 8 on the port side. Where was the starboard whale-boat and where was No. 8? A. The whale-boat was forward of the No. 8 on the same side.

Q. When you left the whale-boat did you leave

1570 the other men of the crew there, or did they go with you? A. I went to No. 8 with the crew of the No. 8; the crew that belonged to No. 8.

Q. How many of the men that were with you at the whale-boat went over to No. 8, and how many remained there? A. The whale-boat was not put down into the water right away when they went with me to No. 8.

Q. All of them? A. Yes, all of them.

Q. Did you all come back to the whale-boat together? A. Yes, after we couldn't get out No. 8.

Q. How long were you away from the whale-boat before you came back? A. Perhaps ten minutes.

1571 Q. Was anybody at work at No. 8 to get her out before you got there? A. Yes, there were third-class passengers and others.

Q. Was there any of the crew? A. Yes, and the crew.

Q. When you got back to the whale-boat was there anybody there besides the men that came with you? A. I can't say.

Q. Were there any passengers saved in the whale-boat? A. Yes.

Q. How many? A. There were two that first wanted to go in the whale-boat, and then they got scared and went up above on deck.

Q. Then there were none who went in the whale-
1572 boat? A. No.

Q. You say that you followed the *Cromartyshire* aft; how far aft did you go? A. Way aft almost; to see what sort of a ship it was.

Q. Did you go way aft? A. Not altogether way aft.

Q. How far from the stern did you go? A. Thirty or forty meters; from the stern.

Q. Did you see the *Cromartyshire* after she passed, after the vessels were free? A. No; we wanted to see whether it was a sailing vessel or a steamer that ran into us.

Q. Which deck were you on? A. The upper 1573
deck; spar deck; way up on top.

REDIRECT-EXAMINATION BY MR. JONES:

Q. As you went aft looking after the *Cromartyshire* was she still tangled with the *Bourgogne*, or was she disengaged? A. I couldn't tell you.

Q. Did you notice whether there was more than one break in the side of the *Bourgogne?* A. I can't say.

Q. Did the *Cromartyshire* strike the *Bourgogne* more than once? A. I don't think so.

Q. Do you know how many compartments were filled with water? A. I can't say. 1574

Petitioner's counsel states that he will take the rest of the depositions, on this point, out of court.

RENE JAPHET, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. You are the superintendent of the pier and dock of the French Steamship Company, are you not? A. Yes.

Q. How long have you occupied that position? 1575
A. About five years ago now.

Q. That is in this city? A. In this city.

Q. Do your duties include the inspection of the ship as to her outfit, lifeboats, bulkheads, and other matters necessary to make her seaworthy? A. Yes, sir, I go with the inspectors of the various vessels, when they go through the ship.

Q. How often are the vessels of the line inspected by the Board? A. Once a year.

Q. When was the last inspection prior to the loss of the *Bourgogne?* A. The 29th of March, 1898.

1576 Q. Was she passed by the inspectors? A. She was passed by two inspectors; one for the hull and one for the machinery.

Q. By the hull do you mean to include the lifeboats and bulkheads? A. Everything that is on the deck.

Q. And all other requirements of law? A. Yes.

Q. What examination did you make of the condition of the *Bourgogne* on the voyage just before she went on the voyage on which she was lost? A. We didn't have any special examination at that time.

Q. Did you make any examination? A. I did
1577 not; not specially.

Q. Is it your custom and was it the fact that you, with the captain and some other officers of the vessel, went over the ship before she sailed?

Objected to.

A. Not at that time especially.

Q. What precautions did you take in the way of ascertaining her seaworthy condition as to lifeboats, life rafts, bulkheads and other things necessary to make her a proper vessel to send to sea; just describe that in your own way? A. We always take care to be in accordance with the law; to do everything that is required by law.

1578 Q. Do you know how many bulkheads the *Bourgogne* had? A. I think the *Bourgogne* had ten bulkheads; I can't be positive.

Q. Do you know whether they were in good order or not? A. I think they were good; the ship had been almost renewed one year before.

Q. Do you know anything about the lifeboats? A. Yes, I know the lifeboats were of the measurements required by the law.

Q. How about the life rafts? A. The same thing for the life rafts.

Q. Do you go through the ship yourself, when she 1579
is in port? A. I go with the inspectors to help them when they make an inspection of the ship.

Q. When was the last visit of the inspectors? A. The 29th of March, 1898.

Q. I understand you to say that she passed their inspection and was satisfactory? A. Yes, sir, of course; because we got the certificate of the inspectors.

Q. Do you make any examination of the ship yourself? A. I am on the ship very often; I go very often into the holds, and I have to take care of the loading and unloading and coaling and everything on board. 1580

Q. Do you make visits to the ship with the captain or the second captain, or any other officers? A. Not with the officers except when the ship has to be inspected by the inspectors.

Q. Do you know of any defect in the bulkheads, lifeboats, or life rafts? A. No.

Q. Or machinery? A. No.

Q. Or her hull, any defects? A. When there are any, yes.

Q. I mean when she went on her voyage upon which she was lost do you know of any defects in these particulars? A. No, sir.

CROSS-EXAMINED BY MR. BENEDICT: 1581

Q. You say the ship was inspected on the 29th of March. Do you mean by the steamship inspectors here in this port? A. Yes, sir.

Q. Were you present on board while that inspection was being made? A. Yes, sir.

Q. How long did it take? A. It took one day and a half.

Q. Did you go with the inspectors wherever they went? A. I go especially with the inspector of the machinery.

Q. You went with the inspectors of the engine? A. Yes.

1582 Q. Did you go with the other inspectors wherever they went? A. I can't go with both of them.

Q. Please answer the question. A. I can't go with both of them, because one is on deck and the other is in the engine room.

Q. Then you didn't go with the other inspectors? A. Not all the time.

Q. What part of the ship, if any, did you go with them while they inspected it? A. I had been especially in the steerage.

Q. What were they inspecting in the steerage? A. They were taking the number of the life preservers.

1583 Q. Anything else that you were present at? A. I don't understand exactly what you mean.

Q. Was there any other part of their inspection at which you were present, for the inspection of the hull, I mean? A. We went on the deck to see the boats, to see the life rafts.

Q. You were present at that time, were you? A. Yes; very often.

Q. Were any boats put in the water? A. No, sir.

Q. You have said that the lifeboats were of the measurements required by law. Do you know what the measurements required by law are? A. Yes, sir; I can't remember exactly now; but I know the

1584 rule; so many cubic feet with the gross tonnage of the ship.

Q. Do you know that the requirements of the law are that the ship shall have as many boats as will provide for the safety of all the persons on board of her? A. I think there is no question——

Q. Do you know that, is the question? A. No, sir.

Q. Did you see the boats measured? A. Yes; not specially on the *Bourgogne.*

Q. I am asking about the boats on the *Bourgogne?* A. No, sir, they were measured before I was there; and they are measured once for all.

Q. Who measured them? A. The inspectors of 1585
the government.

Q. Did you see the report of the measurement that they made? A. Yes, sir.

Q. Did you make any affidavit with reference to that measurement? A. No, sir.

Q. Mr. de Bocande made the affidavit, did he not? A. I don't know.

Q. I understand you to say that after that inspection you didn't make any personal examination as to the condition of the vessel? A. Myself? No, sir.

Mr. Jones: The petitioner rests as to this part of the case, and such other witnesses as we may have will be called out of court. 1586

Mr. Benedict: I object.

Mr. Jones: I will take the remainder of my time for rebuttal.

Mr. Benedict: Your Honor, I want him to go on. I strongly suspect that the counsel is keeping back witnesses that are more important on this question of the collision than those he has examined.

The Court: You ought to have a little confidence in the Court. If Mr. Jones takes advantage of the opportunity to introduce testimony which is subject to criticism the chances are that I shall have an opportunity to understand that fact. I don't think counsel will fail to give me the benefit of sugges- 1587
tions to that effect. I understood yesterday that you agreed that Mr. Jones should have two days and you should have one. We have gone until half-past three, and Mr. Jones says that he desires to introduce some rebuttal testimony for the time that would be left him, and therefore he wishes to save that much time. He also says that the witnesses he proposes to call are of the same class as the topman. I have heard one witness, and he asks for that time. It does seem to me that in all fairness it is not unreasonable to say that a couple of hours

1588 of his time should be devoted to rebuttal testimony on the questions that are going to come up here.

Mr. Benedict: These are not witnesses in rebuttal, they are witnesses in chief, just as much as these witnesses that he has examined.

Mr. Jones: There is no doubt of that; but I want the time for rebuttal.

Mr. Benedict: I think that it is fair that the counsel should state what witnesses in chief he proposes to examine out of court.

Mr. Jones: These are sailors on board. All the officers were lost, and these are sailors whom we are bound to account for; they are within our reach,
1589 and we are going to call them and ask them what they know about it.

The Court: Go on with the testimony and give Mr. Benedict the list afterwards.

Mr. Benedict: *I will* read certain answers to interrogatories first of all.

Mr. Jones: I object on the ground that the interrogatories are all on file; they can come up on the argument. I would like to have some of Mr. Benedict's witnesses produced before your Honor; it seems to me that he doesn't want to produce any witnesses.

Mr. Benedict reads the first and second ques-
1590 tion and answer, and puts them in evidence.

Mr. Jones: Mr. Benedict has hounded the company from Dan to Beersheba about the condition of this ship and everything, and he says now I put the answer to this third interrogatory in evidence, and he is passing on to the fourth and fifth, and says I will put them in evidence. I am entitled to have all the answers and all the interrogatories put in evidence, or none whatever.

Mr. Benedict: That is just where you are mistaken. I am entitled to put in anything that I see fit.

Mr. Jones: The rule of law is that the answers 1591
to interrogatories may be used as evidence by the interrogating party. I concede that the rule is that we can't use them, but that is not the point. The point is, if you use part you must use the whole of them. It is not fair; it is not carrying out the purport of the examination to use a part and not the whole.

The Court: Is not that a question that may be discussed on the argument?

Mr. Jones: That may be so, and I will leave it if you say so.

Mr. Benedict: The third question and answer are read. The fourth, part of the question was not 1592
answered at all. The fifth is read. I put in evidence the pamphlet also annexed to the answer. The fifth is read—The year begins the 22d of July, 1897, and closes the 22d of July, 1898. The next question is——

The Court: What is the object of this?

Mr. Jones: There has been a charge of all kinds of things, and the gentleman doesn't want to bring his witnesses within the vision of the Judge.

Mr. Benedict: I know more of this case than your Honor *can*. And I know that this is necessary. Your Honor will see that this will help you very much. It is very short, any way.

1593

The Court: Very well; go on.

Mr. Benedict: The next question was as to the amount of money they received for service—the answer is 5,473,400 francs. The next question is as to the amount received. The 8th question "was not each voyage of each of the steamers numbered" and the answer was "Yes." "What was the number of the voyage of the *Bourgogne* on which she was lost? A. It was numbered 27 for the year 1898." Next, "Was not each sailing of each steamer from Havre to New York and back to Havre treated as and called one

1594 voyage?" The answer is "Yes," and an addition to it which I decline to read. The next question is, "Were not regulations prepared on behalf of the company, and by it delivered in a printed form," etc. And the answer is, "Yes, in 1898 the captains had a copy of the regle," etc. The tenth question is read. The next question, "Was not in the year 1896 a regulation furnished," etc., and I call your Honor's attention to this particularly, Article 395 of the said Regulation. The next question as to insurance, "She was insured for 2/3 of her value," etc. The next question is with regard to any abandonment, and as to the next question, "The company
1595 doesn't impose any fine upon her captains," etc. (See page 137.)

Mr. Murray: Annexed to the answer of Perry & others there are also interrogatories. I want to put them in evidence also. (Page 144.)

PETER C. PETRIE, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. What is your business? A. United States Local Inspector of steam vessels.

Q. How long have you been such? A. I have
1596 been at the head of the office five years, nearly; but I have been eighteen years in the service.

Q. Have you here present with you the certificate of the inspection of the steamer *La Bourgogne* in the spring of 1898? A. I have the books here which my assistants show how they inspected her, and her equipment on board.

Q. Will you let me have it? A. Yes, sir; there are two books there; one the boiler inspection and the other the hull.

Q. Was this inspection in consequence of an ap-

plication by the agent of the owners here? A. Yes, 1597
sir.

Q. (Handing witness paper.) Is that the application attached? A. Yes, sir.

Q. The agent being Mr. de Bocande? A. Mr. de Bocande.

Mr. Benedict: I offer this inspection in evidence. It is marked Respondent's Ex. A, Dec. 30/01. (Page 1159.)

Mr. Benedict: We will substitute a copy for the original, and I want to call your Honor's attention to the parts that I wish especially to handle.

Q. Will you look at the page which is headed 1598
"Remarks and Boats"? A. That is all right, yes.

Q. What are those figures on that page? A. She had twelve boats and four rafts; here are the measurements of the boats, length, breadth and depth of the boats, and the cubic feet contained in each boat.

Q. How many of those boats were lifeboats? A. All lifeboats.

Q. Look again and see if you say that?

Witness examines book.

Q. For the purpose of refreshing your recollection just look at the certificate which has been put in, and see if that doesn't state that the whole number of lifeboats is ten, and that the whole number 1599
of boats is twelve? A. Number of lifeboats ten.

Q. What were the other boats? A. Those were ordinary boats.

Q. These boats are all numbered on that page? A. Yes, sir.

Q. Which of them were the other boats that were not lifeboats? A. I am not prepared to swear to that; from the book I should say the two last numbers were not lifeboats; 11 and 12.

1600 By Mr. Jones:

Q. Did you make this inspection yourself? A. No, sir, one of my assistants did.

Mr. Jones: I don't want to obstruct any inquiry, but it seems to me that the assistant should be brought here.

Mr. Benedict: I am offering this to prove that this vessel was not supplied with boats according to the law of the United States.

The Court: But this witness has no personal knowledge concerning it.

Mr. Benedict: If he can't tell from that which
1601 are the boats which are not lifeboats, I don't care. Let him say he can't.

By the Court:

Q. Can you state, from your own knowledge, whether those were all lifeboats, or not? A. No, I cannot from my own knowledge.

Mr. Jones: Then I object to the witness testifying, as he is not competent to testify as to what was there.

The Court: I certainly rule this out. This witness doesn't know anything about it.

1602 By Mr. Benedict:

Q. Do you know whether the calculation of the cubic feet, that you speak of there, was made according to the second section of the third rule of the steamboat inspectors? A. When I observed this, the boats were equal to that required by law.

Mr. Benedict: I move to strike out the answer.

Q. My question is whether that calculation was made in accordance with section 2 of rule 3? A. It was.

Mr. Benedict offers in evidence Section 2 of 1603
Rule 3 in evidence. It is as follows:

"2. The carrying capacity of all lifeboats shall be determined by the following rule:

Rule. Multiply the outside length, outside width, and inside depth together, and the product by .6; and divide the product by 10 for ocean, lake, bay, or sound steamers; and, for river steamers, divide the product by 7; the quotient will be the number of persons such a boat is allowed to carry."

Q. Let me ask you again whether those figures stated in the column after the measurements, is the 1604
product of the length, width and depth, and the .6 spoken of in that rule?

Mr. Jones: How does this witness know that? He didn't make the examination himself.

By the Court:

Q. Are you able to answer that question from your own knowledge? A. I don't go into every calculation, but I run through some of them and make the calculations. My assistant does it, and he does it under oath.

1605

By Mr. Benedict:

Q. Don't you recollect going over those figures with me, and making those calculations? A. No, I don't remember that.

Q. Who was the man who did make those calculations? A. His name is Wilmont.

Q. Is he in the service now? A. He is in the service, but I don't know whether he is in the office; I guess he is upstairs now.

The man Wilmont is sent for, and it is reported that he is out, on a boat.

1606 Q. Assuming that this line of figures on that page is the number of cubic feet multiplied by .6, how many persons would be the capacity of each of those boats? How many would No. 1 carry? A. 37.

Q. No. 2? A. 37 also.

Q. No. 3? A. 21.

Q. No. 4? A. 21.

Q. No. 5? A. 58.

Q. No. 6? A. Same number, 58.

Q. No. 7? A. 569 feet; that would make 57 people.

Q. No. 8? A. The same number, 57.

Q. No. 9? A. 60 people.

1607 Q. No. 10? A. No. 10 would be the same number, 60 people.

Q. Now the other two boats we will assume that they were the boats that were not lifeboats for the moment. How many would each of those carry? A. 36 in each.

Mr. Benedict: They foot up 466, besides the two 36s, which would give us 538 persons that the vessel had capacity for, and the answers of Mr. testify that she had 714 persons on board; so that there were over sixty persons——

Mr. Jones: This is where the humbug comes in. Counsel is trying here to make an argument on
1608 incomplete facts. He utterly ignores the fact that the vessel had in addition to the lifeboats four life rafts.

Q. Are the life rafts also spoken of there? A. Yes, sir.

Q. How much is the capacity of each life raft? A. 300 feet.

Q. That would make 120 persons for the four life rafts? A. Yes.

Mr. Benedict: Adding those life rafts the boat capacity of this vessel was over fifty persons short;

or, there were fifty persons on board of this vessel 1609
who could not be saved. I will call your Honor's attention to the law and the rule. The law requires that a vessel shall have that number of boats which will best care for the safety of all persons on board. Now the rule is as follows: The 12th section of this same Rule:

> "The total capacity of lifeboats, or of lifeboats and life rafts, on steamers navigating the ocean, except steamers of 100 gross tons and under, hereinafter provided for, shall not be less than the capacity given, according to tonnage, in the following table:"
>
> For the tonnage of the *Bourgogne* the cubic 1610
> feet of boats is 5,670. And the rule requires that she shouldn't have less than that; the law requires that she must have enough to preserve the safety of those on board, and she was fifty-six short.

CROSS-EXAMINED BY MR. JONES:

Q. I have not examined this record of your inspection, but you are familiar with it, and I wish you would tell the Court whether or not that certificate shows that the *Bourgogne* had the requisite number of lifeboats and life rafts required by the inspectors for a ship of her class. 1611

> Mr. Benedict objects, on the ground that this is a question of law.
>
> Question admitted.

A. This *Bourgogne* was voted according to that table, as furnished us by the United States Supervising Inspectors. If you will read to me the tonnage of the vessel and the number of boats required you will find it in that table.

Mr. Benedict: Yes, I read it.

1612 The witness: You didn't give the number of boats required and the tonnage. (Reading.) "The total capacity of lifeboats or of life boats and life rafts on steamers navigating the ocean shall not be less than the capacity given according to tonnage in the following table." The tonnage of the *Bourgogne*, according to the following table, total capacity of boats 5,670 cubic feet.

Mr. Jones: What do you mean by tonnage? All I know is that the vessel has been inspected and passed by the inspectors. This is new to me.

Mr. Benedict: As the gross tonnage of the *Bourgogne* was 7,395 tons, she required a cubic feet measurement of boats and rafts of 5,670, that is, accord-
1613 ing to the table.

Mr. Jones: Does the rule state the gross tonnage?

Mr. Benedict: It is the tonnage. The question is whether she had the boats required by the law.

The Court: But the counsel wants to ask the question of what was required by the inspectors, and it is proper for what it is worth.

Q. (Repeated.) I wish you would tell the Court whether or not that certificate shows that the *Bourgogne* had the requisite number of lifeboats and life rafts required by the inspectors for a ship of her class? A. Yes.

1614

By Mr. Benedict:

Q. Is there any other requirement except this 12th section of Rule 3, that I have spoken of? A. No.

Q. That is the only requirement? A. That is the only requirement as far as boats and rafts are concerned.

Q. Do you say that there is anything in that rule which requires how many boats and rafts the *Bourgogne* should have had on this voyage, when it says

the boats "shall be not less" than this amount? A. I don't understand you exactly. 1615

Q. The rule requires that she shall have not less than a certain amount? A. It is that certain amount.

Q. 5,670 cubic feet. Is there any requirement as to how much more it shall be? A. No.

Q. Then all that you mean to say, by saying that the rule is fulfilled is that you mean to say that she had that amount, but did not have any more? A. She had more, according to the showing of this book; she had 6,604 feet.

Q. That was the amount that she had? A. Yes.

Q. Which would authorize her to carry, according to this rule, 660 persons, would it not? A. No, sir; nothing to do with it. 1616

Q. Doesn't Rule 3 provide how the number of persons that a boat shall carry shall be obtained? A. Up to a certain number of people we allow ten feet to a passenger; but no vessel in the world could carry the number of boats to a passenger.

Q. Doesn't the rule require that this boat capacity of 5,670 shall be divided by ten, in order to tell how many persons the boat capacity is for? A. I can't answer that.

Q. You can't tell whether that rule requires that number of feet divided by ten? A. Not as you put the question. 1617

Q. I only put it whether it does or doesn't require it. Don't you know that the rule requires—sub-division 2 of this rule 3 requires that the number of persons that a boat is allowed to carry is to be arrived at in the case of the *Bourgogne* by dividing this total capacity of boats, 5,670, by ten? A. No, I don't think that; I don't look upon it in that light. I don't exactly understand your question, because you are complicating that rule.

Q. This section 2 requires that the carrying ca-

1618 pacity of lifeboats shall be determined by the following rule, and it gives the rule, to wit, that you are to "Multiply the outside length, outside width, and inside depth together, and the product by .6; and divide the product by ten for ocean, lake, bay or sound steamers; and, for river steamers, divide the product by 7; the quotient will be the number of persons such a boat is allowed to carry." Now, don't you understand that those figures on that page were arrived at for each boat according to that rule? A. Certainly.

Q. Don't you understand that the rule says that if you divide that product by ten the quotient will
1619 be the number of persons such a boat is allowed to carry? A. Yes.

Q. When you have footed up all the capacity of all the boats on the *Bourgogne*, and the rafts, will you tell me how many cubic feet of boat capacity calculated according to that rule you find? A. According to that rule the *Bourgogne* had on board 6,604 feet.

Q. And the rule provides that, dividing that by ten will be the number of persons that such a boat will carry. Divide that number by ten and tell me how many persons those boats should carry? A. Those boats should carry, dividing it by ten, 660 people.

1620

RECROSS-EXAMINATION BY MR. JONES:

Q. As I am not familiar with these calculations I wish you would explain to the Court why the *Bourgogne* was not required by your inspectors to have more lifeboat capacity than that which it appears, according to this calculation, to have been the fact. I want to know, in other words, what your method is in exacting these requirements with respect to lifeboats and life rafts. You can state to the Court in your own way what you do with vessels of this

class, and what was particularly done, according to this certificate with regard to the *Bourgogne?* 1621

Mr. Benedict: I submit that this is not a pertinent question.

The Court: You have really put two questions. The first question is pertinent and proper.

Mr. Benedict: There is no proof that they only required that number of boats.

By Mr. Jones:

Q. If the *Bourgogne* only had lifeboat and life raft capacity for 660 people, will you please state why you grant a certificate that she had the requisite number of lifeboats, lifeboat capacity, when it was possible for her to carry more people? 1622

Mr. Benedict: Objected to as entirely immaterial.

The Court: The question is admitted.

A. Every ship of the *Bourgogne* class, for ocean steamers we boat them according to that rule; not according to the number of passengers they carry. That rule is laid down for our guidance that every ship of a certain tonnage must carry a certain number of boats.

Mr. Benedict: No; it says she shall have not less than a certain number of boats. 1623

The witness: The cubic feet of boats; it comes to the same thing.

Mr. Benedict: If you think it does, why swear to it.

Mr. Benedict: I propose to call your attention to a deposition taken by us, of Captain Santelli. I subpœnaed and examined in August, 1900. He was then captain of the *Touraine.* He had been subpœnaed to bring a copy of the Service a Bord, which he did not bring, and he was shown a paper and asked if that was not a copy; a copy of the

1624 article with reference to the speed in a fog. The petitioner's counsel instructed the witness not to answer, and the witness refused to answer. But on my request he read the paper. He was asked if he was familiar with the article he read, and under the same instructions he refused to answer. He was asked whether there was any other instruction furnished to him as master as to the speed of steamers in a fog, and he refused to answer. He was asked whether in May, 1894, there was not a collision between the *Touraine* and the *Sully*, and he refused to answer; he was asked whether there was not a suit arising out of that, and he refused to
1625 reply. The matter was brought before the court, and the court decided that the questions must be answered. The examination was then adjourned under this commission. It was still further adjourned, and the witness has never been produced for further examination. After making a stipulation to produce the witness, he has never been produced, and I call for his production now.

Mr. Jones: He is not within the jurisdiction of the court, and not in the service of the company; he never came to New York afterwards, and more than that the object in calling your Honor's attention to this deposition is that counsel sought to examine Captain Santelli about entries in the logbook of an-
1626 other steamer in the line, and other collisions of the steamer; we had a good deal of trouble over that before Judge Brown, and Judge Brown finally ruled that he wouldn't require any inquiry into any logbooks except those of Captain Delonele.

There is nothing in this deposition to call upon Captain Santelli to come here. If he came here he would be called upon to produce something which Judge Brown ruled out, and called upon to testify to facts covered by the same ruling. He is out of the jurisdiction of the court, and I can't compel

him to come here, and I certainly can't produce him. 1627
I will consent that Mr. Benedict may send a commission to find the witness.

Mr. Murray: Judge Brown, when those exceptions were argued, last November, specifically decided and entered an order to the effect that the questions must be answered, and the order is on file.

The Court: You can find the order.

ROBERT D. BENEDICT, being duly sworn and examined as a witness for the respondents, testifies:

If your Honor please, in August last I went to the Clerk's office of the Tribunal of the Seine, in 1628
Paris. I asked to see the decision of the court, made in the case of Captain Cordier, the commander of the ship *Sully*, and the Compagnie Transatlantique, and Captain Santelli, and the decree was shown to me. I obtained a copy of it, which is here, which I compared carefully, and which I know is a correct copy, and which I offer in evidence.

Mr. Jones: Are we trying the *Sully* case, a collision with another steamer, other officers, not one of whom are on the *Bourgogne?* If we are going to try all the collision cases that the company has had and the cases in which they have been unsuccessful, I don't think that there is any one in this 1629
court room who will live to the end of this inquiry, so far as time is concerned.

Mr. Benedict: The object is to show that the Compagnie Transatlantique, this petitioner, had notice that Captain Santelli, one of its masters, on the *Touraine*, in a dense fog, ran his steamer at a speed of 16½ knots, her maximum speed being 18 or 19, with only a reduction of a knot or two of speed; that the suit was brought against the company and against Captain Santelli to recover the damages and that the court in that decision decided and thus gave

notice to the company that the running of the speed of one of their steamers at such a rate as that in a fog was a violation of the law; that therefore the company thereby had notice in that one instance, and I propose to follow it up, that its steamers were not run at a moderate rate of speed in a fog. It is proved by their answers that they never gave any instructions in reference to that matter except the one which has been read.

The Court: I don't see any reason for the production except the last statement of Mr. Benedict if it appears from this that the company had notice that its steamers were being run contrary to law, etc.

Mr. Jones: It couldn't possibly appear. It is that particular instance, and I will follow it up by showing the instances when it has not been found in fault, another captain, another steamer.

The Court: I should not think of admitting it except that single point, and I will look at that. I wish you would point out to me that the company had notice that its custom of running its vessels was contrary to law and dangerous.

Mr. Benedict: I will read just what there is. There had been an examination in Martinique by the tribunal there. (Reads from decree.)

The Court: Excluded.

Mr. Benedict: I offer another judgment of the same character in another case.

The Court: Excluded.

Mr. Benedict: I ask your Honor to reserve that objection until we can argue it solemnly because I am confident that I can show to your Honor that that evidence is evidence.

The Court: I shall be very glad to reserve it for the argument, but if you want me to rule on it now I exclude it. If you want it to come up in argument I will do so.

Mr. Benedict: I have got three cases in which this same notice has been given to these parties.

Mr. Jones: I certainly ought to show the cases 1633
where the company has been exonerated. I don't remember now of a single case where this company was held in fault for excessive speed, and I think I have tried a hundred cases here.

Mr. Benedict: I will show you one immediately.

The Court: I exclude it. If upon the argument I should change my mind and decide that it is admissible I will give you an opportunity to review it.

Mr. Benedict: I ask that these be marked as exhibits.

The Court: They can be marked for identification.

The paper is marked "Respondents' Exhibit A" for identification, of this date. (Page 1634
1164.)

Mr. Benedict: The other one is a judgment of the Court of Commerce at Havre in an action between Captain Bjornsen of the ship *Tellus*, and the Compagnie Generale Transatlantique and the captain of the *Bretagne*.

The Court: That is excluded.

Marked "Respondents' Exhibit B for identification" of this date. (Page 1171.)

Mr. Benedict: I offer the decision of this court in the case against the *Normandie*, a similar case 1635
against the Compagnie Generale Transatlantique, or one of their steamers. It is reported at the 43d Federal Reporter, 155, and affirmed by the Circuit Court in 58 Fed Rep, 427. Those records are offered in the same way to show again notice to the company that the vessel in that case, the *Normandie*, was also going at too great a rate of speed, notwithstanding the regulations which they had made.

The Court: Excluded subject to argument here-

1636 after. I understand that counsel wishes to be heard on the question of admissibility of that evidence.

Mr. Noble, one of respondents' counsel, asks the Court to ask Mr. Jones to produce in court to-morrow the office list of the passengers showing the cabins to which passengers were assigned, and states: "My purpose in doing that is to assist in identification of certain passengers being on board so that I can avoid issuing one or two commissions."

Mr. Jones: I do not think there can be any objection to that if there is such a thing. Papers are
1637 sent on the other side, but if it is here it will be produced.

Mr. Benedict: I offer in evidence the decision of the District Court of Massachusetts in the case of the *Columbian*, which is reported in Fed. Rep., 91, page 801. I offer it as a whole, but particularly for the purpose of this quotation: "The only fault alleged against the steamer is excessive speed," etc.

I offer it in evidence as showing the finding of the court that the ocean steamers have a usage of going at undue rate of speed in a fog. I offer in evidence with that the opinion of the Circuit Court of Appeals in the same case, Fed. Rep., 100, for the purpose of giving this language on page 992, "The
1638 steamer was clearly in fault."

The Court: I don't see why time should be taken up in this way.

Mr. Benedict: I offer it in evidence here, and I think it is fair to the other side.

The Court: Put it in and go on with the examination of this witness.

Mr. Benedict: Another offer is the opinion of the Supreme Court of the United States in the case of the *Umbria* in 166 U. S. Reports, page 408, as to which I refer particularly to page 409.

THEODORE CAMMEAU, being duly sworn and exam- 1639
ined, through the interpreter, on behalf of the respondents, testifies:

By Mr. Benedict:

Q. Where do you live? A. 449 Hudson Street.

Q. What is your business? A. Manufacturer of fixtures.

Q. Were you a passenger on board the *Bourgogne* at the time she was lost? A. Yes, sir.

By Mr. Jones:

Q. What kind of fixtures do you make? A. Wood fixtures; cabinet maker. 1640

By Mr. Benedict:

Q. What time did the *Bourgogne* pass Sandy Hook on the day when she sailed? A. About three o'clock the day of her departure.

Q. Did you see any posting up of the amount of speed that she had made during the first twenty-four hours? A. Yes.

Q. Do you remember what that was? A. 375 up to noon of the next day.

Q. Where was your berth on the night of the 3rd of July? A. It was in a cabin; I don't remember the number of it. 1641

Q. Did you turn in that night? A. Yes.

Q. At what time? A. At 7.30.

Q. Were you out after that time? A. Yes.

Q. At what times during the night were you out on deck? A. At eleven o'clock, when I heard the siren blow.

Q. How long were you out on deck that time? A. I stayed there from eleven o'clock until the time of the collision.

Q. What was the weather during that time? A. Very foggy.

1642 Q. Was there any slackening up of the speed of the *Bourgogne* during that time? A. I didn't see any.

Q. Did you take notice as to whether there was any? A. Yes, I did.

Q. What was the fact of it? A. I asked why they didn't go slower in such weather, and it was replied it ain't worth while to slow down.

Q. Who did you ask? A. I asked an officer there.

Q. Do you know who? A. I asked Mr. Laisne, who is present here; I didn't know his name at the time.

Q. During that time was the siren of the *Bour-*
1643 *gogne* blowing? A. Almost all the time.

Q. Where were you at the time of the collision? A. In the right hand side of the ship.

Q. Whereaway forward or aft? A. Aft.

Q. What called your attention to the collision first? A. When the collision took place the masts and rigging fell down over the engine and on to me.

Q. What did you do at that time? A. I went and woke up the passengers with whom I was acquainted, and an officer told me "Shut up your box or I will break your face for you."

Q. Did you see the wound in the side of the *Bourgogne?* A. Nobody could see it; it was impossible; it was down below.

1644 Q. Didn't it come up to the deck? A. No.

Q. How long after the collision did the vessel sink? A. One hour and four minutes.

Q. How do you know that? A. Because I have my watch, which went all the time, until it was broken with a blow from one of the oars. A sailor who is here broke it.

Q. Whereabouts were you during that time? A. I helped get out the two only boats that were put into the water; I got them out myself with very little help.

Q. How many men helped? A. Corre, the sea- 1645
man, helped me, and a few of the passengers; Mr. Chanut, the glove manufacturer in New York, also helped; he was pushed away with an oar and he wasn't able to save himself.

Q. Have you ever been a seaman or followed the sea in any way? A. No, I have not, but I have made a number of voyages on the ocean.

Q. What was the condition of the boats that you were able to get out, as to their being easily detached? A. We pushed a long time; four of us got hold of No. 9 boat; we couldn't turn the ends of the davit; they were closed with keys; the butcher went and tried to get some tools to hammer it with. 1646

Q. Did he get them? A. He had the key of his butcher shop and he was excited so that he let it fall overboard.

Q. Did he get any tools to open the locks? A. No.

Q. How were the fastenings loosed? A. We turned the boat up over the davit; when we got one out we forced the other out with pieces of the mast that had fallen; I got in the boat to see whether there were any oars in there.

Q. After the first boat was got over the side was it dropped into the water? A. After we got the boat turned over I went down into the cabin to call somebody; when I got back the boat was in the 1647
water and the tackles had been cut.

Q. How was it with the other boat? A. I commenced to work on the other boat, which hadn't been moved from its davits; we tried to turn it and to lift it with tackle; but we couldn't do it, because there was so much paint covering the tackle.

Q. So that the tackles wouldn't move? A. Neither the tackle nor the ropes nor the davits would work.

Q. Did you notice when the ship began to list over to starboard? A. About fifteen minutes after

1648 the collision she commenced to take considerable of a list.

Q. Had anything been done to get the boats out before that list? A. Nothing; nobody did anything; Mr. Dupont, one of the officers, came there and shouted to the sailors, and asked them why they were striking the passengers instead of working on the boat; he was the only one; Mr. Laisne told me to take a revolver and kill them.

Q. Do you know the numbers of these boats? A. The first boat was No. 9 and the second No. 11.

Q. Whereabouts on the ship were the passengers after the vessel began to get the list? A. They
1649 were most all on the other side of the ship; the left side of the ship.

Q. Were there any orders given to the passengers as to arranging them, or anything with reference to getting into the boats? A. No orders.

Q. Were any officers of the ship there on the port side, that you saw? A. Yes, I saw several who were trying to get the boats out into the water.

Q. Did you see any assistance afforded to any of the passengers to get into the boats to save themselves? A. No; there was none; they were kept out of the boats.

Q. What boat were you saved in yourself? A. No. 11.

1650 Q. How many men were saved in that boat? A. When we started from the side of the ship we were seven or eight, and when we got alongside of the *Cromartyshire* we were fifty-seven. I counted them myself; I picked them up all along.

Q. How many were passengers besides yourself? A. There were only three or four passengers out of the lot; I swam over two hours to pick up one of them.

Q. Were there women among the passengers on board the ship? A. Many.

Q. How many of them were saved? A. One. 1651

Q. While you were trying to get the boats out did you have to hammer any of the spikes or anything of that kind to get the boats loose? Did you injure your hand? A. I was obliged to strike on a sort of a hook to which the boats were attached, and I struck on a little point which was covered with paint; I finally pulled it out with my tooth.

Q. Was that necessary in order to get the boat loose? A. The boat was in the water hanging to the davits when it was in the water; we got it loose from the davits down there.

Q. When the ropes of the davits were freed that boat could be disengaged by any one person? A. 1652
It was impossible; there were at least fifteen of us worked at it, and we couldn't get one cord loose.

Q. You got on board the *Cromartyshire* afterwards, did you not? A. Yes.

Q. And were you afterwards transferred to the *Grecian?* A. Yes.

Q. And taken on board of her to Halifax? A. Yes.

Q. Did you see Mr. Laisne, the engineer, who has been examined here, on board the *Cromartyshire?* A. Yes.

Q. Did you see him on board the *Grecian?* A. Yes.

Q. Did you have any conversation with him as to 1653
the speed of the *Bourgogne?* A. Yes.

Q. State it.

Objected to.

It is admitted as testimony to contradict the witness Laisne.

A. I told Mr. Laisne that we had been going very fast, and he said "Oh, if we had continued to go at that speed we would have arrived at one o'clock Saturday, with such calm sea."

1654 Q. When was that conversation? A. The same day that we went on board the *Grecian*. At that time Mr. Laisne got into a rage and wanted to strike Mr. Lebre.

Q. Who was present at the time of that conversation? A. Everybody who was saved.

Q. Who was present to hear the conversation? Was the captain of the *Grecian* there? A. Yes, the captain of the *Grecian* was there.

Q. Did the captain of the *Grecian* take any part in the conversation? A. The captain turned around and said, "I would like to see a sailor like that hung up to my mast," and then he walked away.

1655 Mr. Jones: Is this to go on?

The Court: As I understand it this is to discredit the testimony of the witness this morning.

Q. Was Mr. Delfonti present at that conversation? A. Yes.

Q. Did you see any of the other boats after they were in the water? A. I saw the whale boat.

Q. How many passengers did that have? A. About nine I think; the whale boat got away right away afterthe collision, we saw her when she came alongside the *Cromartyshire*.

Q. When she got away from the side of the *Bourgogne* were there any passengers in her, or were
1656 they all crew? A. We counted the people that were in the boat; she got away from the *Bourgogne* right away after the collision, we saw her when she came and no passengers in the whale boat; we counted them.

Adjourned to to-morrow, October 11th, at ten A. M.

NEW YORK, October 11, 1901. 1657

Met pursuant to adjournment.

Present as before stated.

THEODORE CAMMEAU, being cross-examined, testified:

By Mr. Jones:

Q. You said in your direct-examination that you are a dealer in fixtures? A. A manufacturer of fixtures.

Q. Where is your place of business? A. 449 1658
Hudson Street.

Q. What kind of fixtures do you manufacture? A. I am a cabinet maker and builder also.

Q. What do you mean by using the word fixtures in connection with cabinet making? A. All fixtures, interiors of stores and everything in that line of woodwork.

Q. Bar fixtures? A. Barber's fixtures.

Q. What class of passenger were you on the *Bourgogne?* A. Third class.

Q. That is ordinarily called steerage, isn't it? A. Yes.

Q. I understood you to say that you had frequent- 1659
ly travelled on ocean steamers? A. Not by the Transatlantique Line.

Q. I said nothing about the Transatlantique Line. You have frequently travelled on ocean steamers, was my question? A. Several times.

Q. What lines have you travelled by? A. I went to France by the Freycinet Line, from France to Africa; I also went from Marseilles to Constantinople; I am not sure whether it was the same line or not. I have crossed the English Channel several times. I came here to this country by the Cunard

1660 Line in 1882. I came to Boston. I have also been to Florida. I took the Savannah Line and Clyde Line to go there, and I have been on French merchant vessels as well.

Witness hands his card to counsel and it is marked Petitioner's Exhibit 12½ of this date. (Page 1185.)

Q. You have a claim against the Cie. Generale Transatlantique growing out of this collision? A. Not yet; haven't brought any suit against them yet.

Q. Haven't you made a claim upon the allegation that you deposited certain money with the purser
1661 of the *Bourgogne?* A. Yes; Mr. Jones knows it very well.

Q. What was the amount of your alleged deposit? A. $3,000.

Q. In money? A. Yes, sir.

Q. Have you got a receipt for it? A. I had a receipt from the purser and I lost it with my other effects. Mr. Jones and Mr. de Bocande took information in regard to the matter, and Mr. de Bocande one day asked me why I took so much money with me. I told him the reason why. He wrote to the head office in Paris to inquire whether they wished to reimburse; they said they would not. He told me that he had received a letter from the head office
1662 saying that they would not reimburse me; Mr. de Bocande wrote me to that effect.

Q. Did you authorize your attorney, Mr. Brownson, to come to see me? A. Yes.

Q. Did you authorize Mr. Brownson, your attorney, what to say to me?

Objected to.

A. I refuse to answer unless Mr. Brownson is present.

Q. I ask you if you authorized Mr. Brownson or Bronson—I don't know which it is—to state that

unless the company settled this claim of $7,000, as 1663
I understood it, or $5,000, you would offer yourself as a witness for the claimant in this case, and if we would settle you would give testimony in favor of the petitioner.

Mr. Benedict: Objected to. That is just what counsel can't do; that is a matter of privilege of counsel. You can't ask a man what he said to his counsel.

Mr. Jones: I ask this witness what he authorized his counsel to state to me. I don't ask for any communication that he made to him in a confidential capacity, but what he authorized or stated to his counsel to state to me, that is all I ask. 1664

Mr. Benedict: I understand the privilege of the party as to what passed between him and his counsel is absolute. I have authority here——

Mr. Jones: You anticipated this then?

Mr. Benedict: No, sir, I beg your pardon. It came up in reference to this matter of the subpœna.

The Court: The practice in New York is somewhat different from what it is in Connecticut on that point, as I recollect it. I should like to hear what you have to say on that, because I know what the rule would be in my own jurisdiction. If you have got a case on that point I should like to hear it.

At this point Mr. Brownson appeared in 1665
court.

Mr. Benedict: The rule is well established that neither a party nor his legal adviser would be compelled in a court of justice to disclose confidential communications.

Mr. Jones: The word confidential is excluded. It is what he told his counsel to represent to me. That is not confidence; on the contrary, it is the other thing—the reverse of confidence. A confidential communication of course is protected.

1666 The Court: I think that question is admissible.

Mr. Benedict: The form of the question is objected to. I think counsel should ask what he was authorized to say.

The Court: Of course that objection is good. The question is a leading question.

Mr. Jones: It is within your Honor's discretion on cross-examination.

Mr. Benedict: I withdraw the objection.

The Court: The question is proper and is admitted.

Q. (Repeated.) I ask you if you authorized Mr. Brownson to state that unless the company settled
1667 this claim of yours of $7,000, as I understood it, or $5,000, you would offer yourself as a witness for the claimant in this case, and if we would settle you would give testimony in favor of the petitioner? A. I did not. I answer no to both questions.

Q. When did you first see Mr. Benedict in this case? A. Some little time ago; I don't recollect; but not long ago. I saw him with my lawyer, Mr. Bronson.

Q. You seem to have a pretty good recollection about the facts of this collision and the speed of the *Bourgogne*. Can't you remember approximately when you saw Mr. Benedict? A. I have got such a
1668 good recollection about it that I shall remember the facts of the collision always. I have been sick ever since.

Q. (Repeated.) A. I can't say exactly; two or three months ago; I can't give the date. I was at my lawyer's office and he said to me, "Let us go and see Mr. Benedict about this case."

Q. Do you remember whether that was in May or June or July or when? A. I can't recollect the moment exactly; it had no special importance. We didn't talk any together; I never spoke of that matter except here in court.

Q. What matter do you refer to? A. I never 1669
talked about the *Bourgogne* matter.

Q. Do you mean to tell me that you have had no conversation with your counsel or Mr. Benedict about the facts of this case? A. Mr. Benedict asked me whether I was a passenger. I had a few words only with him about it. I have talked with my lawyer about it.

Q. Now you admit that you had a few words of conversation with Mr. Benedict? A. Yes.

Q. Was that before you had presented your claim to the company and had it rejected? A. I don't know when my lawyer did what he did, or what he did; I don't know the time that he did it, or what 1670
he did.

Q. I am not referring to what your lawyer did. But you testified that Mr. de Bocande was applied to by you and ask you whether that was before or after you saw Mr. Benedict? A. It was three years after that I saw Mr. Benedict. I didn't know Mr. Benedict before. I made a personal demand on Mr. de Bocande three years ago. Mr. de Bocande made an investigation of the matter at that time.

Q. Can you remember now the speed of the *Bourgogne* as posted up in the companionway on the first day of her voyage? A. Yes.

Q. What was it? A. 375 miles.

Q. What was the posted run on the second day 1671
of the voyage? A. That is easily to be found out, on taking the latitude and longitude of the spot where she went down.

Q. You also say that you noted the time that the *Bourgogne* left Sandy Hook? A. I am not sure, because I took a third class passage at half-past eight in the evening and I afterwards paid a little more to have a better room; and while we were going out by the Hook I was with one of the men arranging that matter.

1672 Q. What did you do on the first night of the voyage out? A. I turned in at eight o'clock; I was sick.

Q. How long had you remained in bed? A. Till five o'clock the next morning.

Q. Were you asleep or awake? A. I was awake all night from being sick.

Q. What was the matter with you? A. I had personal matters which annoyed me and kept me awake.

Q. What was your physical condition during the following day? A. I was very well.

Q. Did you sleep any during that day? A. Yes;
1673 during the day.

Q. How long did you sleep? A. I slept a few hours; four or five or six hours during the day; I went to bed several times.

Q. Do you remember what time you went to bed first? A. I remember that I turned in at ten o'clock and then got up again at meal time.

Q. What time was that? A. Twelve o'clock.

Q. When did you go to bed again? A. About two o'clock; and I slept about an hour; I remained in bed about an hour.

Q. You didn't observe these periods of time accurately, did you? A. No.

Q. After you got up the last time do I under-
1674 stand you to say that you remained awake on deck and prowling around the ship until this collision? A. From Sunday night to Monday morning.

Q. What time did you wake up after you slept last on Sunday? A. At eleven o'clock Sunday night when I heard the siren.

Q. How long had you slept then? A. I turned in about half-past seven; I slept perhaps fifteen minutes.

Q. Will you state why you remained up all night? A. If you will allow me to tell without stopping me, I will tell.

Q. Yes. A. Because there were people on board 1675
who were amusing themselves dancing and drinking all night with the officers, and I was afraid that something would happen on account of the speed which we were making through the fog which existed. If Mr. Jones hadn't asked the question, I shouldn't have made the statement.

Q. Where was this dancing? A. In the saloon; in the dining saloon. They were drinking champagne. The waiters brought it up on deck I think as late as half-past two in the morning. One waiter said, "We know how to serve champagne; we open a bottle and pour out a little and keep the rest for ourselves." 1676

Q. Do you mean to say that champagne was being freely distributed among the steerage passengers that night? A. No, but two bottles were brought up on deck, and one-third of each was gone. Mr. Laisne was there and he can testify to this. Mr. Laisne saw me there a little before two o'clock, and he knows that I was on deck there. All the people on board were working pretty near all night, getting ready the flags and decorations for the Fourth of July celebration which was to take place. They were putting on the souvenir of *La Bourgogne* 4th of July, 1898, and making these decorations, little flags that were put into envelopes, and each one had letters on them; and at the table on the other side 1677
of the saloon there were others drinking champagne.

Q. And this was the third class saloon, if I understand you right? A. No; in the first-class saloon.

Q. Don't you know that the bar of the *Bourgogne* was closed that night at eleven o'clock? A. I don't know whether the bar was closed or not. I kept up on deck all the time from eleven o'clock till five o'clock.

Q. Did you drink anything? A. I didn't drink any. They offered me some champagne and I just

1678 tasted of it. I was outside on the deck; out in the air.

Q. Did you take anything to drink during the night besides this champagne? A. No; I only tasted champagne; I wasn't feeling very well.

Q. (Handing witness envelope.) Is this your handwriting? A. Yes.

Q. (Handing witness letter.) Is this your handwriting? A. Yes.

The envelope and letter are offered in evidence and are together marked Petitioner's Exhibit 13 of this date and the letter is read in evidence by petitioner's counsel. (Page 1186.)

1679 The witness: I sent one letter care of the company, and one I sent direct. I wish you would produce the others if you produce that one.

Q. This is the gentleman in court to whom the letter is addressed, is it not—Mr. Laisne? A. Yes, sir.

Q. Will you state what your object was in seeing Mr. Laisne?

Objected to as immaterial. Admitted.

A. Because Mr. Laisne came to see me several times and he was afraid he was going to be discharged by the company and wanted to know if I couldn't help him.

1680 Q. Was it with a view to helping him that you wrote this letter asking him to take dinner with you? A. I wanted to tell him that I wouldn't have anything to do with him, after having read the deposition that he had made. That is why I wrote that letter.

Q. And you wanted to take dinner with him to tell him that you wouldn't have anything to do with him after reading the deposition. Is that your explanation? A. Certainly.

The rest of the answer is stricken out as not responsive on motion of counsel.

Q. You say that Mr. Laisné was in great distress 1681
lest he should lose his position and applied to you. What relations have you, if any, with the company, that would enable you to aid an employee who was uncertain about his position? A. Not to help him, but he wanted me not to report what he had said on the ship. He didn't wish me to help him otherwise than not to repeat what he had said on the ship.

Q. What did Mr. Laisné say to you that gave rise to this disturbance of mind? A. If he had had a revolver he would have killed all the passengers that he could and the waiters.

Q. It was this declaration as you state that disturbed Mr. Laisné about the security of his posi- 1682
tion? A. And in other matters he had talked too much.

Q. You were so interested in that that you invited him to come and take dinner with you? A. Because he wanted to attack somebody on the ship, and I kept them apart two or three times, he feared he was going to be arrested for it.

Q. And you were so interested in his case that you asked him to dine with you? A. No; I invited him more as a companion of misfortune than anything else.

Q. You couldn't have regarded him very highly after what he had declared to you, if that be true, could you? A. Yes; I had been very sick and Mr. 1683
Laisné took it in hand to go and see my wife for me if I could not come to New York. I was very sick; I vomited blood very freely from my mouth.

Q. You had no intention of talking to him about your claim against the company, had you? A. No; he had nothing to do with that.

Q. The facts concerning the collision had something to do with it, hadn't they? A. Not with Mr. Laisné.

Q. Do I understand you to say that whether or

1684 not the facts that you said Mr. Laisne declared to you were true had nothing whatever to do with your claim against the company? A. I don't think they did.

Q. You had no intention to talk to him about the collision at all? A. Yes, I expected to talk about the collision, but not about my claim.

Mr. Bronson: I wish to state to the Court that there has been a suggestion that I proposed to Mr. Jones an arrangement as to Mr. Cammeau's testimony, and I wish to emphatically deny any such thing. It is an outrage to bring me into this case.

The Court: There is no affirmative evidence of
1685 this, and until such evidence is offered, this will not be considered.

Mr. Benedict offers in evidence the deposition of OSCAR HELMORE HENDERSON, taken under commission. (Page 235.)

Mr. Jones: Is that the deposition that I moved to suppress?

Mr. Benedict: Yes.

Mr. Jones: That can be disposed of on the hearing.

The Court: I don't care to hear argument on that matter now. I should prefer to hear that on the argument.

1686 Mr. Benedict: I offer that deposition in evidence.

The Court: I should rather not hear any discussion.

Mr. Benedict: I should like to know what objection is made to that deposition. Supposing that the objection that is made would call upon me to give proof, I am entitled to know what the objection is. I offer the deposition in evidence.

The Court: If the objection is such that it requires that you give proof, I will give you an opportunity. That is what I said to Mr. Jones yesterday.

Mr. Benedict objects.

Decision reserved.

Mr. Benedict: I ask the ground of the objection 1687
to be stated.

Mr. Jones: The ground of the objection is that the petitioner has not in the taking of this deposition had an opportunity to cross-examine this witness. The grounds are fully set forth in a motion which I made for the suppression of this deposition which Judge Brown heard and upon which he reserved his decision until a new commission could issue requiring them to produce the witness. As I understand, that commission has never been executed.

Mr. Murray: There are also some letters here which explain the new commission sent by Mr. Jones as ordered by Judge Brown, that he should 1688
have an opportunity to send a new commission for further cross-examination if he desired to do so. He did so and it was returned, because there was nothing in the commission to compel the production of the witness, and the counsel wrote letters to the clerk of the court explaining why the commission was not executed.

Judge Thomas first ordered the issuing of this commission, and Mr. Jones made a motion to suppress it before Judge Thomas, who denied the motion to suppress. Mr. Jones then made a further motion before Judge Brown to suppress the deposition, and Judge Brown refused, but gave Mr. Jones 1689
an opportunity, if he should desire, to send further cross-examination.

Mr. Jones: Let us see Judge Brown's order.

Mr. Murray: The order that Judge Brown dictated and made required that we should produce the witness, which we objected to at the time. But notwithstanding that, I wrote to the attorneys in London of the owners of the *Cromartyshire*, asking them if they would write to Henderson to appear upon the commission at Hull or Grimsby and answer the interrogatories. The solicitors in London

1690 did write to him and ask him to appear, and he wrote back to them and said that he had already appeared upon two commissions. One taken at Nagasaki taken in the Circuit Court.

Mr. Jones wouldn't agree that we should read in this proceeding, and we then got an order to show cause why the same interrogatories and cross-interrogatories should not be sent to Henderson again. That was the order that Judge Thomas made in the middle of the summer—to send him the same interrogatories and cross-interrogatories. That commission in San Francisco was the one that was executed, and has been offered in evidence now.

1691 Then Mr. Jones made a motion to suppress that deposition and Judge Thomas denied the motion; and counsel made a further motion, and Judge Brown disposed of it, saying that he could have the opportunity to send further cross-interrogatories to Henderson. And those were the ones that Henderson said he wouldn't attend to any more because he had been bothered all around the world.

We did everything possible to produce the witness or to get him there, although we disclaimed power to do it; but we did everything that was possible; and here is the commission. (Page 235.)

1692 Mr. Jones produces the order of Judge Brown, referred to, and reads portions of it. (Page 266.)

Mr. Murray then asked for the prior order of Judge Thomas, which had denied a similar motion to suppress the same deposition, which was produced by the Clerk, and handed to the Court. (Page 255.)

Mr. Jones: I wish to say that this witness was examined on commission issued from the Circuit Court in one of these cases—perhaps in two cases of the same class. When this proceeding was commenced, whilst I was abroad—and Mr. Benedict has

adopted that practice through this case—a motion 1693
was made on a short order to show cause served at my office why a commission should not issue upon the interrogatories and cross-interrogatories that were propounded to the witness in the Circuit Court. That was opposed, but Judge Thomas granted the commission without deciding whether or not that was regular. In other words, the order was in effect that we should be bound in this proceeding—and with subsequent knowledge of what we might be able to extract from the witness—by the cross-interrogatories in the Circuit Court.

I made a motion to suppress the deposition in this court upon the ground that we were really offered 1694
no opportunity to cross-examine the witness from the knowledge of his testimony that we then possessed, and Judge Brown made this order that I have read. The requirements of that order have not been fulfilled, and up to this present time there has been no disposition of the question as to whether that deposition should be suppressed or not. The point is that I was not bound two years afterwards, with what I had learned of some declarations of this witness, by the cross-examination that I had made in the Circuit Court. The order of Judge Thomas was that the commission should issue upon those interrogatories and cross-interrogatories. It 1695
was an irregularity, because when a commission is issued, it is issued upon interrogatories to be framed in regard to that commission, not in regard to another commission.

The Court: I shall have to take that under consideration.

Mr. Benedict: The action was pending in the Circuit Court between some of these same parties and the petitioner. The motion for a commission was made and was granted to examine Capt. Henderson, who was the captain of the *Cromartyshire,* in refer-

1696 ence to the facts of the collision. That commission went to Japan in order to be executed and was returned. It came back here and had not been opened, although it was on file at the time that this proceeding was commenced and the order staying the proceedings in other matters was entered.

I applied to counsel for a consent to open that deposition and see what was in it. He refused. I then applied to Judge Brown for an order setting aside the order for a stay in all other cases so far as to permit the opening of that commission. He granted the order and made an order opening that commission. (Page 514.)

1697 Thereafter we applied—learning that the witness was within a certain point where he would have to be reached within a certain time—for an order to show cause before Judge Thomas why the commission should not be executed again on the same interrogatories and cross-interrogatories as before. Judge Thomas, after hearing the representatives of the present counsel, made that order and the commission was executed on those same interrogatories which the counsel had served and examined the witness upon, and came back.

Then came the application on the counsel's part to suppress that commission, and the judge made this order as you see.

1698 Under those circumstances, counsel never having made any order or any application for any order from that time until the present, I submit that under all the practice of the court, any irregularity —if it is one—is to be brought up and settled before the trial of the cause. Therefore the commission which was opened and was put on file is entitled to be read. But that is a matter your Honor may dispose of.

Mr. Murray: On the original interrogatories and cross-interrogatories as settled Mr. Jones' state-

ment is—and it was before Judge Brown and Judge 1699
Thomas—that he had been deprived of the right to cross-examine the witness.

As matter of fact Mr. Jones himself annexed to his interrogatories when they were first sent, the testimony of Captain Henderson, which had been taken in the High Court of Justice in England between the owners of the *Cromartyshire* and the owners of *La Bourgogne*, some time in the year after the accident. The witness was elaborately examined there and elaborately cross-examined by the attorneys for the company. This deposition Mr. Jones himself annexed to these cross-interrogatories, and when we argued the thing before Judge 1700
Thomas we brought that out——

Mr. Jones: In connection with the question——

Mr. Murray: It is in the deposition that that same testimony was annexed to this commission that went to San Francisco. So that when counsel states that he has not had an opportunity for cross-examination, I state that it will appear by the deposition that the witness has been elaborately cross-examined twice by cross-interrogatories and cross-examination in England. That is part of the deposition. We can't find the man. He is going to sea.

The only reason we got the order to show cause 1701
was because he was only to be about ten days in San Francisco.

I applied to Mr. Kopf to read the deposition in the Circuit Court, and he would give me no satisfaction at all. He said he didn't know whether Mr. Jones was in Europe or not. So it became necessary late that July afternoon to do something rather than in any way prejudice our rights. We took the precaution to have an order to show cause returnable the next morning why it should not be done under the same interrogatories as used before.

1702 The Court: I think I shall ask Judge Thomas to dispose of this question.

Mr. Benedict offers in evidence the deposition of Captain Henderson taken in the Circuit Court of the United States on interrogatories and cross-interrogatories, in the action of Deslion against La Compagnie Generale Transatlantique.

Mr. Jones objects as not having been taken in this cause.

Decision reserved.

Subject to objection, the deposition is
1703 marked Respondents' Exhibit 14 of this date. (Page 174.)

Mr. Benedict offers in evidence deposition by La Casse, which is marked Respondents' Exhibit 15. (Page 268.)

Mr. Jones states that there is no objection to that, but that he does not intend to waive the objections noted on the depositions as to the materiality of certain testimony.

Mr. Benedict offers in evidence the deposition of Capt. Poirot and it is marked Respondents' Exhibit 16. (Page 319.)

Mr Benedict also offers in evidence charts
1704 which are marked Respondents' Exhibits A1 to A7 inclusive.

Also charts of December, 1891, and the following January, being similar charts to those already marked, of an earlier date. Marked Respondents' Exhibits A8 and A9.

Charts in original form accompanying the record.

Mr. Jones: If I shall be compelled to appeal this case I don't want a great mass of charts. I object to the introduction of the charts as immaterial.

The charts are received subject to objection.

Mr. Benedict: I want to call your Honor's attention to the fact of a measurement on the chart that the distance the *Bourgogne* ran from the time she left this coast until the collision was 675 miles, as shown by the measurements on these charts. 1705

Mr. Jones: That can only be made when the precise point of collision is established.

Mr. Benedict: That is established by your own answers and by the evidence of Henderson.

Mr. Jones: Henderson's deposition is not in evidence.

Mr. Benedict: There is no dispute as to where the collision did take place.

Mr. Benedict produces a paper which he offers in evidence and hands to counsel for examination. 1706

Mr. Jones: This is an extract from a certain *proces verbal* concerning the death of one Miss N. Picot. As far as that paper purports, it is nothing but a certificate of the authorities in France that she died and died under such and such circumstances. We can't be bound by that.

Mr. Benedict: That is an extract of the report that was made in Havre with reference to the disappearance of the *Bourgogne*. That states the position where she was lost; and that is the object, and the sole object, of its production. There isn't any dispute about it, anyway. 1707

Mr. Jones: If the paper is offered for that sole purpose, I don't object to it.

Mr. Benedict: That is all, and I read that sentence from it without the rest of it. A translation of it is as follows:

> "On the 4th of July, 1898, about five o'clock in the morning, the steamer *La Bourgogne*, which started from New York the second of the same month destined for

596

1708 Havre, being 60 miles south 10 degrees east true from Sable Island by chart, was collided with in fog by a sailing vessel which was afterwards recognized to be the *Cromartyshire.*"

Mr. Benedict also offers in evidence the deposition of Capt. Nunan of the steamer *Grecian,* the steamer which came up to the *Cromartyshire* after the collision and took off the passengers and crew that were on board of her and took them to Halifax.

Mr. Jones: I have no objection as to the regu-
1709 larity of taking the depositions. There are certain objections to the testimony.

It is marked Respondents' Exhibit 18 of this date. (Page 409.)

Mr. Benedict also offers in evidence the deposition of Capt. Fajolle, one of the captains of the French Line.

It is marked Respondents' Exhibit 17 of this date. (Page 339.)

Mr. Benedict: I propose to put in the French law as to collisions, as to the right to recover by persons injured in collision, as to the responsibility of the owners.

1710

Mr. Jones objects to it as immaterial and irrelevant as appears by the decision of the Circuit Court of Appeals of the United States.

Decision reserved.

HERBERT PEETERS, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. Where do you live? A. At Flushing, Long Island. My business at present is caterer.

Q. How long have you followed the sea? A. 1711
Twenty-two years.

Q. In what capacity? A. Cook and steward; but lately I have been deck steward and second steward.

Q. Have you made any voyages on the steamers of the Compagnie Generale Transatlantique between New York and Havre? A. Yes, sir; for about twelve years and six months.

Q. About how many voyages did you make on different steamers? A. About eighty-eight all together; on the *Gascogne*, *Bourgogne*, the *Navarre*, and that is all.

Q. During these voyages were there periods dur- 1712
ing which the weather was foggy?

Objected to.

A. Yes, sir; about six or seven voyages out of the ten.

Q. What was the practice on those steamers as to the speed of vessels during those periods of fog?

Mr. Jones: The question here is the speed of the *Bourgogne* at the time of this collision, and that is the sole question. If this witness can give any testimony as to the speed of the *Bourgogne* at the time of the collision, no doubt it is admissible; but any practice on other ships and any practice that 1713
might have prevailed with other captains than this one is entirely irrelevant and too remote.

The Court: You asked that same question and Mr. Benedict objected, and I said that I thought the Court of Appeals had recently ruled in an accident case that such evidence was proper by way of making a comparison between what the custom of that corporation was and other corporations, so as to determine whether it was negligence or not. I can't change my ruling on your question yesterday.

1714 Mr. Jones: But there is no foundation here for any comparison.

The Court: But that naturally follows. I admitted that question yesterday, and I think it is admissible.

Counsel for petitioner excepts.

A. To make always regular time, because the ships are to get in on Sunday, fog or not.

Q. You don't quite answer the question as to the speed during the times of fog? A. They never slowed down; in mid-ocean they went full speed, but in the English channel the speed was now and
1715 then reduced to sound.

Q. How did you know that such speed was maintained during the fog? A. By the revolutions of the engines.

Q. What do you know of the general practice of transatlantique steamers, as to whether or not they slow up speed in a fog?

Objected to, as it is not shown that the witness knows anything about it.

Excluded.

Q. Have you ever been on any other vessels than the steamers of the Compagnie Generale Transatlantique? A. Yes, sir; on the Hamburg Line and
1716 the Red Star Line from Antwerp.

The rest of the answer is stricken out on motion of petitioner's counsel.

Q. What do you say as to the practice on those lines?

Objected to. Objection overruled.

Counsel for petitioner excepts.

A. I have always seen the same thing; I have always seen in mid-ocean when it was foggy going full speed to make the time. When the ships come in,

you notice they make regular time, and even better 1717
time in fog, because when it is foggy it is smooth water; they make better time in fog than they do in bad weather.

CROSS-EXAMINED BY MR. JONES:

Q. Were you second steward in the service of the French Line? A. Yes, sir; second steward; and I have been cook and deck steward, and I have been in almost all the civil departments of a passenger ship.

Q. How did you come to offer yourself as a witness? A. I was asked.

Q. By whom? A. By a lady who lost her daugh- 1718
ter on board.

Q. Have you any experience in navigation? A. Yes, sir; a little.

Q. Have you ever commanded a ship? A. I could bring her to Europe if I wished to, in a schooner.

Q. I asked you if you had ever had any experience in navigation? A. I should think so. I have my certificates all over in different ships.

Q. Just state generally what your experience has been as a navigator? A. My experience is when a ship runs four hundred miles and when she was running sixteen or seventeen knots an hour, that I know whether she was running or not. 1719

Q. Have you ever commanded a vessel? A. No, that I have not. I am not come here to testify whether I was a captain or not. I only say I was in the steward's department.

Q. You don't claim to be anything but a steward, so far as navigation is concerned? A. A steward might be as smart as a captain.

Q. I have no doubt that you are as smart as a captain. But I ask you if you claim to be anything but a steward, so far as navigation is concerned? A. No more now; but once I did.

1720 Q. What do you think? Do you think you are as smart as the captain of the *Bourgogne?* A. I don't think I am better than any one else.

Q. Do you think you could command that steamer? A. Capt. Deloncle was a very smart man; he made very quick trips; he had the reputation of making the finest trips out; he had the reputation of making very quick voyages; that is the reason he was pushing along the *Bourgogne.*

Q. Do you claim any knowledge of the science of navigation or the art of navigation or the business of navigation other than that of a steward? A. I don't know any more; no.

1721 Q. Where is your place on the steamer? A. Right amidships.

Q. And your duties are where? A. Around the ship.

Q. On deck? A. Oh, no; right from fore to aft; from the fore part of the ship right aft; that is between decks.

Q. Did you have a cabin? A. Yes, sir.

Q. And your general duties were to assist in the supervision of the stewards in the cabin? A. All over; just the state-rooms, the second-class dining room and look after the cleanliness of the cabins and all around.

1722 Q. Did those duties afford you opportunity for observation of the state of the weather outside in cases of fog? A. We had the whistle blowing all the time—a foghorn.

Q. Could you tell from the blast of the whistle the condition of the fog? A. Yes.

Q. You could? A. Just look out.

Q. You could tell that there was some fog, but how dense it was you couldn't tell? A. I could go on deck; we have been all the time—the door is open all the time.

Q. Did you go out in all these instances to ob-

serve the weather? A. Yes, sir; the second cabin 1723
is right on the deck. You couldn't see otherwise. You turned yourself around to see whether there was any fog or not.

Q. The steamers have places of observation for those who are taking the precautions in case of fog —men at the masthead? A. There is always a man on the monkey-bridge of course.

Q. Do you know why they are posted in those positions? Are they not in the best places because they are the proper places for observation? A. They are always there.

Q. And your place down in the between decks in the steward's department was quite distant from 1724
the bridge? A. Not from the engines.

Q. I am asking you about the weather? A. Of course you know when it is bad weather, and you know when it is foggy weather.

Q. There are various conditions of fog? A. Sure, sure.

Q. Do you know the rule with respect to speed in a fog? A. If it is very thick fog they ought to slow down the engines.

Q. I ask you if you know the rule as to the speed of vessels in a fog?

Mr. Benedict: Do you mean the law, or the rule of this country? The two things are entirely dif- 1725
ferent.

Q. The rule of navigation as prescribed by law— do you know what that rule is in regard to the speed of vessels in fog? A. I couldn't tell; I suppose they ought to slow down; they ought to slow down, but they never do.

Q. Do you mean to say that the steamers of the French Line never slow down? A. Not in mid-ocean, sir.

Q. Not under any circumstances? A. If they

1726 hear a whistle they slow down and find out about where the other vessel is.

Q. Don't you know that the rule of law is, or the rule of navigation is that the speed of a ship in fog shall be moderate? A. Yes, sir; but they don't do it.

Q. What is your definition of moderate speed?

Objected to as immaterial.

The Court: The witness says that his understanding is that they do not go according to the law, do not slow down; and now he is asked to furnish the standard

1727 Mr. Benedict: That isn't a question of standard at all.

Q. What is your definition of moderate speed?

Objected to as immaterial. Objection overruled.

A. They ought to cut the speed down at least one-quarter.

Q. In all conditions of weather?

The same objection and ruling.

A. No; that is when it is thick fog.

Q. There may be a light fog and a thick fog, may

1728 there not? A. There are all kinds of fogs.

Q. Do you claim that they should slow down in cases of light fog?

The same objection and ruling.

A. Well, moderate.

Q. Don't you know that the rule is that a vessel may navigate in a fog under conditions of speed that will enable her to stop and avoid a vessel as soon as she can be seen?

The same objection and ruling.

A. I mean to say that when there is two or three 1729
days under thick fog, a ship ought to go half speed or three-quarter speed. She could never do her proper time; she could never get in port in her proper time—and they generally do; they generally get in port in good time; they never delay.

Mr. Jones moves to strike out the answer as irresponsive.

The Court: Do you understand that question?

The question is read to the witness.

A. Sure they could not.

Q. Do you mean to testify that in these instances to which you have referred that the vessels of this 1730
company were going at a speed in excess of that requirement that I have just mentioned? A. Yes, they do; not only the French Line, but I say all the lines do it.

By Mr Benedict:

Q. Do you know anything as to what was the custom on vessels of the French Line on which you sailed with reference to the closing of the ports in the water-tight bulkheads during a fog? A. They always were closed.

Mr Benedict offers in evidence certain parts of the proceedings of the International Mari- 1731
time Conference in 1889. (Page 1187.)

Mr. Benedict: I will state to your Honor which they are; I don't wish to take up time in reading them unless your Honor would like to hear them. From this proceeding I offer first on page 94 the passage which I have marked in blue pencil, from the remarks of Dr. Sieveking, of Germany. I read this from the Protocol of the proceedings of the International Maritime Conference held in Washington, D. C., October 31, 1889, Volume 1, Government Printing Office, 1889.

1732 The next passage that I offer is what I have marked in blue pencil, in the same way, on page 96, from the statement of Dr. Mensing.

The next that I offer is on page 98, with a similar mark, from the statement of Mr. Goodrich, the delegate of the United States.

The next that I offer is on page 417, a passage also from Dr. Sieveking.

Next on page 425, from the remarks made by Mr. Flood, delegate from Norway.

Next is a passage also marked on page 439, from the delegate of Siam.

The next is another remark of Dr. Sieveking, on
1733 page 441, similarly marked.

The next is from a remark of Captain Richard, delegate from France, on page 445, and also another one on page 447.

Mr. Jones: What is the ground of the offer of that proof?

Mr. Benedict: They prove the usage and practice of the transatlantic steamers to go at full speed in fog.

Mr. Jones: The way to prove that is by examining and cross-examining of witnesses; not by a report of an academic body, framing certain tentative rules of navigation, as this is.

Mr. Benedict: I will argue that also with the
1734 other matters.

Mr. Jones objects.

The extracts are taken, subject to objection.

HERBERT PEETERS recalled for further examination:

By Mr. Benedict:

Q. During what years were you connected with the French Line? A. From August, 1886, to January, 1889.

Q. What times were you on the other steamers of the other lines? A. I was in 1885 on the Hamburg-American, and in 1883 on the Red Star Line. 1735

Mr. Benedict offers in evidence the report of the conference, published in the London *Times*, which conference was with regard to courses to be followed by transatlantic steamships.

Mr. Jones objects.

Mr. Murray: It is secondary evidence, but Captain Santelli represented the French Company there, and we wanted to examine him, but we have been kept from that, and we offer the paper, therefore, to show what was done with regard to it. Captain Santelli was not allowed to answer. 1736

Mr. Jones: You didn't put any question.

The report is taken subject to objection, and is marked Exhibit 19 for identification, of this date. (Page 1190.)

Mr. Benedict offers in evidence a notice to produce, served on counsel for the petitioner, under date of April 17, 1901, a notice to produce on this trial all logs, whether logs of the engine room or of the deck, kept on board of the steamers of the petitioner, during their voyages between Havre and New York for the three years previous to July 4, 1898. 1737

The notice is marked Exhibit 20 of this date. (Page 1197.)

Mr. Benedict also offers in evidence notice to produce copies of the depositions taken before Commander Aubert, in reference to the loss of the *Bourgogne;* also notice served at the same time, that among the witnesses whose presence at the trial would be insisted upon are Laisné, Corre, Pironnec, and Voisin, and the Court will be asked to draw, from their absence, an unfavorable presumption. It has been stated that the witness Corre is in China.

1738 Mr. Jones: We will either produce or account for them.

EDWARD K. JONES, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. You were subpœnaed yesterday to produce certain papers here in court to-day. Have you produced them? A. No, sir.

Q. They are the papers which you wrote to me last June that you then had? A. Whatever papers I stated in a letter as having last June I still have.

1739 Q. Do you decline to produce them, in accordance with the subpœna? A. Oh, yes.

Mr. Jones: I will say in explanation, if your Honor please, that I am, as I stated yesterday—that I have not in my possession a full and complete record of that inquiry. If the counsel on the other side desires a full record I will telegraph for it and furnish it to him at my expense.

Mr. Benedict: I move to strike out that statement. There is no evidence bearing upon this question. An offer is not evidence.

Mr. Jones: I make an explanation.

Mr. Benedict: I didn't ask for any such thing.

1740 You were subpœnaed to produce papers that you say you have; you haven't done it.

The Court: I suppose it is optional with him, either to state that fact in this way, or to have his associate ask him questions, and I don't see any reason why there should be any technicality about taking his statement under oath, without having the formality of his associate asking him.

Mr. Benedict: I only object to his interpolating his offer in evidence.

The Court: I think that should not come in as part of the evidence.

Mr. Benedict: The papers that I call for he says 1741
he has. The law is that where a witness is summoned to produce papers in court he must produce them, if he can. He has got them. As to what they are, and as to what is to be done with them, that is a matter for the Court after they are here. Here is a copy of the subpœna which was served upon him With reference to the law in this matter I have looked it up a little, and that, as I have said, is the rule of law as laid down by our courts, that the parties—even the attorney who is subpœnaed to produce papers, must produce them. This case came up on an application to punish a lawyer for contempt, who had taken just the po- 1742
sition that this counsel has taken here, except that I don't think the lawyer made the extraordinary proposition that he couldn't be subpœnaed to attend in the cause which he was trying. The Court held that he must produce the papers, and that he was in contempt for not producing them; and that having done that and brought the papers, then the question of what was to be done with the papers was a matter for the Court.

The case is the case of Mitchell, in 12 Abbott's Practice Reports, at page 249.

I suppose it will be sufficient for your Honor to inform the counsel as to what is the law in refer- 1743
ence to that, and that counsel will comply with it.

Mr. Jones: I am at the complete disposal of the Court in regard to any papers in my possession. If your Honor will permit me to make a remark as counsel, the subpœna calls for "all translations or outlines of the testimony of witnesses before Commander Aubert which are in your possession, or have been in your possession since this cause was begun." I desire to state as a witness that I have no papers in my possession which I am able to testify to as translations of this testimony or outlines

1744 of testimony. All that I have is some statements in writing in English which I understand were copies of so much of the testimony of each of these witnesses as the counsel for the French Line considered necessary for me to examine in this case.

Mr. Benedict moves to strike out what the witness "understands."

Mr. Jones: I am not able to say that I have got any such papers in my possession.

Mr. Benedict: You have already stated and testified that you had those papers.

Mr. Jones: If I have made use of that expression
1745 it is subject to qualification. I do not know that they are translations.

Mr. Benedict: They are what you said were translations.

Mr. Jones: What I understood to be translations.

Mr. Benedict: Do you object to the reading of the language of your own letter in reference to the matter?

Mr. Jones: No, I do not.

Mr. Benedict: You have in your possession the very papers which you said you had in your letter to me last June.

Mr. Jones: Just let me see the letter.

1746 By Mr. Benedict:

Q. I show you your letter, and ask you whether you have still the papers which you in that letter stated you had? A. I presume that I have these.

Q. And those are the papers, are they not, which were mentioned in the subpœna which was served upon you? A. Yes.

Mr. Benedict reads from case before cited, of Mitchell, and states that Mitchell appeared to think that he was the one to decide the question, instead of the Court's deciding it.

The Court: The practice seems to be somewhat 1747
different in New York from what it is in the Federal courts. I should say that I am inclined to think that Mr. Jones—that it ought not to be so that an attorney notified to produce papers should himself determine the question of their admissibility or the propriety of their production, without any opportunity for the Court to pass on that question, and that, therefore, if Mr. Jones is ordered to produce these papers under this subpœna, *duces tecum*, I think it is his duty to bring those papers into court and place them in the custody of the Court for the Court to pass upon, if you object to their inspection by the other side, Mr. Jones, on the 1748
ground that they are not evidence.

Mr. Jones: Very well, sir.

The papers are produced and placed in the custody of the Court.

EDOUARD LAVANNOUX, being duly sworn and examined as a witness for the respondents, testifies:

By Mr Benedict:

Q. What is your business? A. Merchant; in the flour business.

Q. Do you live here in New York? A. Yes, sir.

Q. Have you ever traveled on the ocean on any of 1749
the steamers of the Compagnie Transatlantique? A. Yes, sir.

Q. On what steamers? A. On all their steamers, or many of them; I mean five new ones; the *Bretagne*, the *Gascogne*, *Bourgogne*, *Touraine*, *Normandie*.

Q. During what periods have you traveled on board of them? A. On the fast steamers since they are built; since 1886 to 1893.

Q. Did you say you had traveled on the *Bourgogne?* A. Yes, my last trip was in 1893.

1750 Q. During that trip on the *Bourgogne* was there any period of fog?

Objected to.

The Court: He has asked whether there was any fog.

A. Yes, sir.

Q. How long did that fog last? A. I couldn't recollect sure.

Q. About how long? A. Generally eighteen or twenty-four hours, on the Banks.

Q. Did you notice whether any slacking of the speed of the *Bourgogne* was made during that
1751 period of fog?

Mr. Jones: This collision took place in 1898, and he traveled from 1886 to 1893, and this captain was not then in command.

Mr. Benedict: Other captains of the same line were, and this is a question of the practice of the captains. I proposed to have given, and I think shall give evidence that this has been the custom of the steamers of this line for years, and I give one instance of it.

Mr. Jones: There should be a contemporary instance given. If the evidence is admissible at all
1752 the custom must be shown to be reasonably contemporaneous.

The Court: The Court has got to pass on that. Of course it is pretty remote, but here is custom. I will admit that question; that goes to the weight, but not as to the admissibility. I think the question is proper.

Q. (Repeated.) Did you notice whether any slacking of the speed of the *Bourgogne* was made during that period of fog? A. I did not.

Q. You did not notice? A. I did not notice.

Q. Had you noticed what the speed was before 1753
the fog? A. I had noticed we were going at full speed.

Q. Were the amounts of travel during the days posted up on board? A. Yes, sir.

Q. Did you see the posting on the day before the fog and the day of the fog? A. I looked at it every day; yes, sir.

Q. Was there any diminution of the amount made on the foggy day from what had been on the other days? A. Not that I recollect. Of course, I took no memorandum of it.

Q. To your memory there was no diminution? A. No diminution. 1754

Q. You say you have made voyages on the other steamers of the line? A. Yes, sir.

Q. Have you been on board of those other steamers during periods of fog? A. Yes.

Q. And have you in the same way examined the daily reports of the amount of speed? A. I always did; yes, sir.

Q. As shown by those records, was there any diminution of the speed during the periods of fog? A. We always took it for granted there was none; but we couldn't——

Q. What is your memory about it? A. That they never did. 1755

Q. Was the arrival of the steamers at Havre on any of these occasions delayed by reason of the fog? A. I noticed it more on this side of the water; going to Havre I could not answer so very well; the last trip particularly I know we got here on Sunday morning I recollect that because I was with my wife and children.

Q. Was there any difference made in the time of the arrival here by reason of fog on the passage? A. I didn't notice it.

1756 CROSS-EXAMINED BY MR. JONES:

Q. How often have you crossed on the French Line? A. I have made about seventy trips; since 1873 I crossed on all the steamers.

Q. Up to 1893? A. Yes, sir.

Q. What were the days of departure? A. I couldn't recollect that; I had the memorandum until I made twenty-five trips, and then I gave it up.

Q. You really don't remember anything about the speed of these vessels in fog, do you? Do you mean to sit there and tell this Court after all this lapse of time that you remember that there was no diminution of the speed? A. I tell you in this case
1757 I was with my wife and children——

Q. Answer the question? A. I can't say that I saw it from the engine; I made a trip in 1894 after that——

Q. Do you know the ordinary dates of arrival of the steamers in Havre? A. The eighth day as a rule after leaving New York.

Q. Don't they sometimes arrive Saturday night and sometimes don't arive until late Sunday, and sometimes don't arrive until Monday? A. They do; yes, sir.

Q. Do you remember the last voyage of the *Champagne* of this line, that she arrived Sunday
1758 night or Monday morning? A. I came back on her last winter and we arrived here on Monday morning.

Q. And her ordinary date of arrival is Saturday night? A. I never arrived on the *Champagne* once Saturday night; I always call it Monday morning.

Q. Have you arrived on Sunday as well as Saturday night? A. I never arrived Saturday night in all my trips.

Q. Was there any instance where the steamer came in on Saturday night? A. Yes.

Q. That was the *Champagne?* A. The year of 1759
the collision of the *Champagne* on the other side with the *City of Rio,* I think it was in 1887; but we did not land.

Q. I understand you to say that you frequently landed on Sunday and sometimes on Monday? A. Sometimes on Monday.

Q. In going the other way were there not the same variations of time of arrival? A. Yes.

Q. You don't profess to be a navigator? A. No, sir.

Q. You don't know the speed which vessels are allowed to run in fog, do you? A. From what I have read in the papers and from their log, I al- 1760
ways took it for granted those steamers run about sixteen or seventeen knots from the average run of 400 miles and more.

Q. That is not my question. Do you know the speed at which vessels are permitted to navigate in a fog? A. Except what I read in the papers.

Q. You didn't make any minute and careful observations of the various conditions of the weather and density of fog while you traveled on the French Line, to enable you to tell about whether or not they reduced their speed? A. No; in a casual way; of course I wasn't on deck all the time.

REDIRECT-EXAMINATION BY MR. BENEDICT: 1761

Q. You said that on one occasion you had arrived on Monday morning, with the *Champagne?* A. Yes, sir.

Q. What was the occasion of the delay on that voyage? A. Rough weather.

Q. For how many days? A. One day; we got in Monday morning.

Q. Was there any delay by reason of fog on that voyage? A. No; not that I——

Q. Did I understand that you had been going

1762 over continuously since 1893? A. No, sir; I made another trip in 1894, in the fall of 1894, and then I made one trip this last winter on the *Champagne*.

EMIL BARUCH, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. Where do you live? A. New York.

Q. What is your business? A. Embroideries.

Q. Have you ever traveled across the ocean on the steamers of this company? A. Yes, sir.

Q. How frequently? A. Most every year since
1763 1895.

Q. Have you traveled both ways? A. Both ways.

Q. What steamers have you crossed on? A. The *Bourgogne, Champagne, Touraine* and *L'Acquitaine*.

Q. Have you during those voyages or any of them had periods of fog? A. Yes, sir.

Q. How long were they, about? A. Sometimes three and sometimes four days.

Q. Have you noticed during that time as to whether there was any slowing of the speed of the steamer during the fog? A. No, sir; no slowing
1764 down.

Q. How have you known whether there was any slowing down or not? A. When you travel on a steamer a certain amount of time, you feel the machinery exactly like your blood beating. They slow down at different times for repairing. I crossed on the *Touraine* when there was some part broken, and they slowed down; and you notice it at once; it brings you right out of your sleep; you feel it at once.

Q. Doesn't the record of the number of miles that are traveled from day to day show also whether

there has been any slowing? A. It does, but I 1765
don't remember exactly about that.

Q. Do you remember whether there was any such slowing shown during these periods of fogs? A. The only thing I recollect is that we get there on the same time; with the *Touraine* on Saturday night, and the other steamers Sunday morning.

Q. The time is the same, whether there is fog or not? A Yes.

Q. What do you say as to whether there were boat drills on the steamers? A. I never noticed it, and I spent most of my time on deck.

Q. Did you ever have any conversation with any of the agents of the company in reference to these 1766
matters? A. No; but with passengers very often, and stewards, and things of that kind.

(The rest of the answer is on motion stricken out.)

CROSS-EXAMINED BY MR. JONES:

Q. What is your business? A. Embroideries, manufacturing.

Q. Do you know the speed at which vessels are permitted to navigate in fog? A. I don't know that, no; it is none of my business; I am no navigator.

Q. You know there is a deck provided for the officers for observation? A. I saw that, yes. 1767

Q. And you have seen the crow's nest in the masthead? A I always did.

Q. And lookouts posted in the bow? A. I did.

Q. Did you ever occupy any of those positions to observe the density of the fog? A. No, sir.

ABRAHAM B. RIKER, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. What is your business? A. Importing millinery goods.

1768 Q. You are a resident of New York? A. Yes, sir.

Q. Have you in the course of your business traveled across the ocean on the steamers of the French Line? A. Yes, sir; a great many times.

Q. How often on that line? A. Perhaps twelve or fifteen times.

Q. During what period? A. During the summer or the winter trips; I usually make two trips a year.

Q. For how many years back? A. Ranging from 1889 till two years ago.

Q. What steamers did you travel on? A. I think they were all of them, except the new steamer; I
1769 have been on the *Bretagne*, the *Gascogne*, the *Normandie*, the *Champagne*, the *Touraine*.

Q. Have you noticed during those voyages periods of fog? A. Generally; yes, sir.

Q. To what extent? A. More or less; it is according to the time of the year; sometimes more at one time of the year than others.

Q. How long would be the fogs? A. It would be from twelve to twenty-four or thirty-six hours.

Q. Have you noticed anything with reference to any lessening of the speed of the steamers during that foggy time? A. No, sir; I never noticed any.

Q. You never saw any lessening? A. I never no-
1770 ticed any lessening of the speed during that time.

Q. Did you keep knowledge of the runs that the ship made during the day? A. During each voyage; yes, sir; from the log.

Q. What do you say as to whether those runs indicated any lessening of speed during the times of fog? A. To my best impression I don't think there was any difference; I could never see any difference at least.

Q. Did you notice whether during those times there was ever any boat drill? A. No, sir; I never saw a boat drill on the French Line.

Q. Have you any knowledge with reference to 1771
the closing of the bulkheads in the water-tight compartments? A. No, sir; I never saw that done.

Q. Do you know whether they were open or not? A. I know they were open. That will be the passage in the cabin there; it would be iron doors and they wouldn't close those passages up; those passages were left open to go from one side of the ship to the other.

Q. In time of fog? A. In time of fog.

Q. Any doors that were below the passengers' deck you don't know anything about? A. No, sir.

Q. You have traveled on steamers of other lines also? A. Yes, sir. 1772

Q. What do you say as to the usage about speed in fog on the other lines? A. I never noticed particularly much difference, although the impression is that some of the English lines showed a little more precaution than this line; it was generally the impression of the old travelers on the French Line that the French Line didn't show the same precautions in regard to fog that the other lines did.

Mr Jones moves to strike out all the answer after the first line.

Mr. Benedict: I submit that that may be admissible on the question of general knowledge and common report. 1773

The Court: This is a question of negligence.

Mr. Benedict: This present is the question of doing the business of this company and of the other companies which are public officials. I submit that the question comes strictly within the rule as to the reports of general knowledge in reference to matters of that class.

Mr Jones objects to the general impression and moves that it be stricken out.

Motion granted.

1774 CROSS-EXAMINED BY MR. JONES:

Q. How long have you traveled on the French Line? A. I have made perhaps twelve or fourteen trips on the French Line.

Q. Were you at any time disturbed in mind by reason of the fact that there was, as you think, no diminution of speed in a fog? A. I was once; yes, sir.

Q. What case was that? A. I was on the *Touraine* once several years ago; perhaps six or seven years ago; and we were crossing the Banks. The fog was quite thick; we were running at full speed, and once in a while the fog would lift and
1775 you could see the fishing boats running right alongside, and we remarked at the time that it would be rather a dangerous thing to run up against a boat of that kind.

Q. Do you know at what speed the vessel could be run in a fog? A. Only in a general way, from the mileage that they put up of the different runs; traveling backward and forward one rather gauges the mileage.

Q. Do you know the rule of law with respect to the speed of vessels in fog?

Objected to as inadmissible. Admitted.

1776 A. I do not, sir.

Q. Did you travel on the vessels of the French Line after this occurrence? A. Oh, yes; I was on the *Champagne* two years ago this summer.

Q. It didn't change your preference in the selection of the line, did it? A. Well, yes, it did; at the time when the other lines came up, after the American and Hamburg lines touched at Southampton, most of the buyers changed over to those lines. We used to travel entirely upon the French Line before that.

Q. That was for what reason? A. We felt there

was a greater degree of safety; that there was more 1777
care taken of the boat.

Q. Wasn't it because of the new and faster steamers? A. No; the Touraine was up to that time one of the fastest boats.

Q. You say the buyers changed? A. I speak of the buyers—there are a number of buyers who go over every year—a dozen or twenty who know each other, going backwards and forwards, and we met twice a year going and coming.

Q. And all the buyers changed off from the French Line several years ago on account of supposed greater safety by other lines? A. Possibly, and possibly perhaps by the better accommodations 1778
the American Line put up going into Southampton.

LOUIS DELFONTE, being duly sworn and examined as a witness for the respondents, through an interpreter, estifies:

By Mr. Benedict:

Q. You were a passenger on the *Bourgogne?* A. Yes, sir.

Q. At the time of her loss? A. Yes.

Q. Whereabouts were you on the steamer during the night before she was sunk? A. I was walking on deck nearly all the time. 1779

Q. From what hours to what hours? A. Between seven and eight o'clock.

Q. In the evening? A. In the evening.

Q. And at eight o'clock did you turn in? A. I retired to go to bed.

Q. When did you come out again after that? A. The next morning.

Q. About how long before the collision? A. About four o'clock in the morning.

Q. What did you do when you came out? A. The first thing I did I went to wash to my face.

1780 Q. And after that? A. I came over on deck and I walked along the deck on the left side.

Q. What was the weather? A. Very foggy.

Q. Did you notice at that time—any of that time—anything with reference to the speed of the *Bourgogne?* A. Yes; I did.

Q. What did you see? A. I noticed that the vessel was going at the same speed as she was the day before.

Q. How did you notice that? A. I leaned over the railing—that is a habit that I contracted since the first day that I got on the steamer; and I saw that the steamer was going at a great speed, the
1781 same as she did before.

Q. How often had you examined with reference to the speed of the vessel during the day before? A. I used to do it pretty near four or five or six times a day.

Q. What was there that occasioned you to examine as to the speed of the vessel? A. For the simple satisfaction, because I wanted to satisfy myself; I wanted to know whether we were going at great speed or not.

Q. Where were you at the time of the collision? A. Amidships on the left side.

Q. What did you do when the collision took place?
1782 A. I crossed the ship on the other side at once; I was on the left side and I came over on the right side.

Q. What did you see when you got over there on the right side? A. I caught sight of another vessel that was being left behind by the *Bourgogne* that was still going at the same speed.

Q. What did you do with reference to saving yourself after that? A. I was nearly half stunned by the collision, and I was waiting for a friend of mine who was in the toilet room; and when he came out of the toilet room my friend asked me what

had happened. So I told him that there was a col- 1783
lision. So he asked me to go down below decks with him and put a life-preserver on, and we did so; and then we came up on deck again. Then we began chatting and talking over the best way to save ourselves; and my friend asked me whether I was willing to jump into the sea. I told him if we would have a chance to see some rafts or boat in the water, or some log or something, I would jump right over and get hold of it.

Q. What, if anything, did you see of any boats being put over? A. I saw a bunch of passengers trying to lower one of the lifeboats, but they coulda't do it on account of the steamer already 1784
leaning on one side too much, and they couldn't free the boat and lower it in the water, and the boat was already filled with people, but they couldn't lower it.

Q. Were there any officers of the ship present at that time? A. No officers, nor any sailor of the company.

Q. Were there any orders given by any of the officers of the ship as to what was to be done for the safety of the passengers? A. During all that confusion I only saw people crying and trying to save each other, but I never heard one single order given by any officer of the company for protection 1785
of life.

Q. How were you saved yourself? A. I jumped into the sea.

Q. And got on board of what? A. I swam about thirty feet until I got hold of a raft; on the same raft there were about eight or ten people.

Q. Any passengers besides yourself? A. Yes.

Q. How many? About two or three passengers; the rest sailors.

Q. Did you go on board the *Cromartyshire?* A. Yes, sir.

1786 Q. And afterwards did you go on board the *Grecian?* A. Yes.

Q. On board the *Grecian* did you see Mr. Cammeau, who was examined as a witness here? A. Yes, sir.

Q. Did you see Mr. Laisne, the engineer, who was also examined as a witness, on the *Grecian?* A. Yes, sir.

Q. Did you see them having any conversation together? A. Yes, sir.

Q. Did you understand the conversation? A. I understood—I saw them talking, but I didn't understand very much; but I could tell they were dis-
1787 cussing some matter.

Q. Do you remember what was said sufficiently to tell us anything that they said? A. I didn't understand.

CROSS-EXAMINED BY MR. JONES:

Q. What class passenger were you on the *Bourgogne?* A. Third class.

Q. That is commonly called steerage? A. Yes.

Q. You have a claim against the company, haven't you? A. No; I only wrote once to the company.

Q. Haven't you filed a claim in this proceeding,
1788 or your attorney? A. Not that I know of.

Q. Aren't your attorneys Bullowa & Bullowa? A. Yes, sir.

Q. It appears by the record that you have filed a claim in this proceeding against the company.

Mr. Bullowa admits making the claim.

Q. You have made a claim against the company, then, haven't you? A. Yes.

Q. And you are interested in the result of this case? A. Yes.

Q. What did I understand you to say your busi- 1789
ness is? A. Stone-cutter.

Q. Where do you work? A. Milford, Mass.

Q. How often have you traveled across the ocean? A. Only twice; when I came to this country, and the second voyage in the *Bourgogne*.

Q. This collision took place in the early morning, did it not? A. About four o'clock; I should think it must have been a little after four o'clock in the morning.

Q. I understand you to say that there was a dense fog? A. Yes, sir.

Q. There was also there darkness of the night, was there not? A. It was dark during the night, but 1790
at the time of the collision it wasn't as dark as during the night; it was already daylight.

Q. Was the *Bourgogne* sounding her fog whistles? A. I heard the siren during the night several times, but I recollect that when the collision occurred it had been at least eight or ten minutes that I hadn't heard the sound.

Q. You are positive in that recollection, are you? A. Yes.

Q. Did you hear any foghorn from the *Cromartyshire?* A. I heard some strange sound, but I couldn't tell whether it was a foghorn or not.

Q. How much of a sound did you hear? A. Just 1791
one stroke.

Q. You say that there had been no diminution of the speed of the *Bourgogne*. How do you know that? A. When I leaned over the railing at four o'clock in the morning, a few minutes before the collision, and looked at the water, I thought that the speed of the vessel was about the same as it was the day before; that is the only way I could tell.

Q. Did you see any lights on the *Bourgogne?* A. I don't recollect having seen them.

Q. Did the *Bourgogne* have a captain on board?

1792 A. The only time I saw the captain of the *Bourgogne* was at the time of the collision he came out on the bridge; I saw him in uniform and then he retired and I never saw him since.

Q. Did you notice whether the steamer was provided with any lookouts? A. I didn't see any of the lookouts.

Q. Did you observe, before the collision, that there were any men washing the decks? A. No.

Q. You didn't see any of these men on this seat (referring to some of the witnesses)? A. Yes, I saw them, but not during that time that you asked me about.

1793 Recess.

The Court: At this time I will fix a month, till the 11th of November, for the taking of additional testimony on the part of the petitioner, and petitioner's counsel can then notify the other side if he wants an extension of time, and I will hear it; and I fix one month from the 11th of November as the limit of time for the taking of additional testimony on the part of the respondents.

Mr. Benedict: I would like to know with reference to the papers which were to be produced here in court, and I also offer in evidence the affidavit of
1794 the trustee that no freight whatever has been delivered to him; it is on file. (Page 156.)

Mr. Jones: I wish to say that in this letter, before referred to, to Mr. Benedict, I stated that I had memoranda of some testimony that was taken before the Wrecking Commissioner. My papers have been changed about, there is a great mass of them, and I think I must have been mistaken in that statement, because I find that these translations are in a cover at this present time marked "The Transatlantique Compagnie *vs.* Resal."

Mr. Benedict: I don't care what they are marked.

These are the papers that you referred to in that 1795
letter. I wish to examine the testimony of Corre. They have put in evidence here the deposition of Corre. I wish to look at that. It was taken before the English Court. Those papers contain the testimony of Corre. That is all I wish to look at now, because that is the only one that they have examined, and Corre is the only one that they have put in. They say they have other witnesses to examine, and if so I may want to look at them.

The Court: But at the present time you only wish to look at the statement of Corre.

Mr. Jones: I object to giving that one deposition, because it is a part of a record, and for that reason 1796
the whole record should be called for, rather than a part. I also object because these are papers delivered to me in my capacity as counsel, and I think they are privileged.

The Court: Where was this testimony taken?

Mr. Benedict: It was taken before Commander Aubert, at Havre; it was an investigation in reference to the sinking of the *Bourgogne*.

Mr. Jones: The papers don't show any such thing. It is a record in another case.

Mr. Benedict: This evidence was put in in the other case; that is the reason of that; and yet it was refused to me entirely.

1797

The Court: If I rule on this I shall rule that these papers were not admissible, and therefore it will be necessary for me to hear you on that when you argue the other questions. The paper presented here is without any authentication whatever. It does not appear to have been signed by anybody, and there is nothing whatever, so far as I can see, except the plain hearsay memorandum of a translation, without any evidence whatever as to its character or authenticity. I will hear you on this question, but I confess that at this time I don't

1798 understand the theory on which a paper of that sort would be admissible in evidence.

Mr. Benedict: I have called upon the counsel to produce the original of that deposition, or a copy of it. He hasn't produced it.

The Court: Let me see that.

The notice is handed to the Court.

Mr. Benedict: Mr. Jones said here that the company had copies of these depositions, and in that connection perhaps I ought to put in Mr. Jones' letter to me in reference to that matter.

The Court: I understand you have not the originals nor copies of the originals in your possession?

1799 Mr. Jones: I have nothing but those translations.

The Court: I will hear you later; but I rule now that those papers are not admissible.

Mr. Benedict: The question is whether they shall be produced to me for examination.

The Court: I don't see why they should be; I think they are private papers for counsel. You have your remedy if these papers should be produced. Offer secondary evidence. These are private papers in his possession.

Mr. Benedict: I only ask now that they should be produced for me to see whether I want to offer it as secondary evidence.

1800 The Court: I don't think it is admissible. I don't say that you are not entitled to look at it. The rule is that you notified him to produce; the penalty is that you may give secondary evidence. But here you have the further right to show that the papers are in his possession, and therefore he should be ordered to produce them; otherwise it is contempt, and he now produces certain papers for which you have called.

Mr. Benedict: As stated in his letter to me, these

are translations of extracts of the testimony of 1801
these witnesses.

The Court: I will assume that they are. I have never heard of any rule by which a paper of that sort could be introduced in a court of justice by subpœna to counsel who has them in his possession. You can have all the exceptions you want. I have never read such a paper in the fifteen years I was in practice, and the ten years I have been on the bench, and I don't see how it can get into this court as a record, and therefore I rule that it is not admissible.

Mr. Benedict: Supposing it is a translation of extracts of the testimony of this witness, which has 1802
been given, and supposing it has in that statements with reference to this matter which are extracts from the testimony which the witness has given?

The Court: Then your remedy is to go to the tribunal and get the papers.

Mr. Benedict: I can't do that; it is a public record whose examination was refused to me in Paris last year; and the paper is here.

The Court: No; if the papers were here I would rule them in in a minute. This is nothing but a rough memorandum, without any evidence whatever that it is anything whatever but the notes of some one who may have sat and listened to the testimony. 1803

Mr. Benedict: Why am I not entitled to see the extract which counsel himself says he has made from the testimony? Why am I not entitled to see whether there is something in it, or not, as admissible in evidence of the witness whom they have examined themselves?

The Court: If there were complete copies or authenticated copies I should admit them.

Mr. Jones: On the witness stand I state: I don't object to the production of any papers that really

1804 show the condition of things, or show the whole case to which these two depositions belong, if there be depositions. I will get a complete copy of them in France and give it to Mr. Benedict.

The Court: You say you will give that to Mr. Benedict. Do you attach any conditions to this offer?

Mr. Jones: On condition that he introduces them in evidence; otherwise I won't furnish them.

The Court: Mr. Benedict, I think you are not entitled to look at them, but I think you have your remedy in another direction. I don't see why this matter can't come up on the argument, or the dis-
1805 cussion of the case. I do not consider that you help matters by asking for these formal memoranda. These are not evidence; they are not admissible. If you raise the question on your notice to produce the copies of the proceedings in connection with Mr. Jones' statement that they are where he can get them—I am now passing on the only question that is before me. Those papers cannot be put in evidence.

Mr. Benedict: I ask your Honor, in view of the fact that I gave notice to the counsel of the company to produce the depositions of this man Corre, or a copy of it, and he has failed to do so, although
1806 he says he could do it, now I ask your Honor to order that a copy of that deposition shall be produced.

The Court: I think a copy of Corre's testimony, the original testimony of Corre, should be produced. I will hear you on that question when you come to the argument. I should prefer to hear you further on that. I will rule now that these papers are not admissible, and as to the others, my impression is that Mr. Jones ought to produce that deposition, and if he fails to produce it it will produce its effect upon the mind of the Court in reaching conclusions.

Recess.

FELICIE F. STEINER, being duly sworn and examined as a witness for respondents, testifies: 1807

By Mr. Benedict:

Q. Do you live in New York? A. Yes.

Q. Are you engaged in business? A. I am; I keep a bureau, an employment bureau on Sixth Avenue.

Q. Have you traveled between here and France on the steamers of the French Company? A. I have; six times.

Q. During what periods? A. The first time in 1885; the second time, I think, in 1897; in 1898, and, I think, again in 1899. 1808

Q. Did you go over and back on the steamers of the French Line? A. On the steamers of the French Line each way.

Q. On any of those trips did you meet fog? A. The only one to my recollection is last year; on *L'Aquitaine*.

Q. What extent of fog did you meet? A. We met a very, very thick fog, from the minute we left the harbor until we arrived in Havre.

Q. What do you say with reference to the speed of *L'Aquitaine* during the fog and during pleasant weather? A. All I can say is that we made about the same speed; because the record was the same as the day before, when it was clear. One day was 1809 quite clear, and the next day we had a fog and another steamer, an English tramp steamer, crossed our bow in the fog.

Q. At what time of day was that? A. It was at night, I judge about eight o'clock in the evening.

Q. Were you on deck? A. I was on deck.

Q. What speed was *L'Aquitaine* going at that time? A. I can't tell you exactly that, because I don't know; but they must have been going at almost the same speed, because at the end of the day

1810 we had made just as many knots as the day before when it was clear.

Q. When you have travelled on other steamers of the line have you had fogs also? A. Not to my recollection.

Q. Did you have any conversation with any officer of the steamer with reference to the speed of the vessels in fog? A. Yes, a few years ago I talked to one of the officers, what they called the mecanicien; but I don't know what that is in English.

Mr. Jones: I can't see what the conversation with a mecanicien of this line several years ago has to do with this case.

1811

Q. Will you state what, if anything, was said to you by that officer of the steamers with reference to their practice of running at speed in a fog?

Objected to. Excluded.

Mr. Benedict: I offer to prove that this officer stated that it was not their habit to slow their engines to run at half speed in a fog.

The Court: The question is excluded.

Cross-examined by Mr. Jones:

Q. Do you remember the daily run of *L'Aqui-*
1812 *taine* on the voyage? A. I do not; I only know every day at noon they bring up the chart, and we usually look at it, and compare one day with the other; but exactly the amount of knots I do not remember; because they usually make a bet or a pool for the number of knots; that is the only reason.

Q. This bet or pool is on the decimal grade, is it not? A. Yes; two francs.

Q. You can't tell from that the exact run? A. It is only on the chart; that is all I can tell you about it.

Q. How many days of fog did you say that you had on *L'Aquitaine?* A. I think about—I can say five safely; five and a half. 1813

Q. Was it thick all the time? A. I should think so; I don't know how to answer that question; I know that at times you couldn't see your hands before your face; I don't know whether you call that thick or thin.

Q. Do you know that in this fog the speed was not diminished? A. I know that the day of that fog we had—the time I was up, from nine in the morning till eight in the evening, we had fog during the night I know nothing of; at the end of the day we had run the same amount of miles as the day before, which had been quite clear and beautiful. 1814

Q. What was the number of miles run? A. I have answered that question, that I did not know; but I know that each day the chart was out, and we compared one day with the other. It certainly didn't interest me enough to take notice of it; I couldn't tell you.

Mr. Benedict: There has been a question between counsel and myself as to this document (marked Petitioner's Exhibit A), the depositions in the English Court. The gentleman on the other side says that he did not offer them all. I understood that he did. In order to save any questions I desire to offer now the deposition of Captain Henderson, from that paper, which is marked Exhibit A. That is, as your Honor understands, the one from which counsel has offered the depositions of Corre, of Laisne, and Ralle. 1815

Mr. Jones: I object for the same reason that I objected to the deposition of Henderson taken in this case, and as to which there was a motion pending for its suppression, on the ground that I have not had a full chance of cross-examining the witness,

1816 The Court: Wasn't this matter all presented and discussed this morning?

Mr. Benedict: This is the notes of the testimony taken in the English Court. I offer that testimony of Henderson taken in the English Court of Admiralty in the suit between the owners of the *Cromartyshire* and the *Bourgogne*.

Mr. Jones: I object. I want your Honor to understand that I don't technically object; I object because I learned facts concerning this witness subsequent to both of these examinations under which I wish to cross-examine him. If I were satisfied with the cross-examination of this witness I cer-
1817 tainly would not object; but I am not.

The Court: I will make a note of that, and pass it all over to Judge Thomas.

Mr. Benedict: I would like to have a definite statement from the counsel on the other side as to whether he will produce any of the logs which he was asked to produce under our notice.

Mr. Jones: There is no difficulty in my getting logs of recent date, but Judge Brown limited the production to two years prior to the accident; I have no objection to producing any that we may be able to get.

The notice to produce is read. (Page 167.)

1818

Mr. Jones: I haven't got them and I don't produce them.

Mr. Benedict: With reference to those that you were ordered to produce by Judge Brown. You did not produce them then; do you produce them now?

Mr. Jones: That has all been over; I have stated that I could not produce them.

Mr. Benedict: You don't produce them then?

Mr. Jones: I don't produce them.

Mr. Benedict: In regard to the list of witnesses.

Mr. Jones: It is impossible for me to state the

total number of witnesses that I am going to ex- 1819
amine. I can easily give the names of the witnesses that I have here. I don't want to be cut off from calling other witnesses. I can give the names of the witnesses here, the men on board of the ship. That is all the list I can give.

The Court: Do you mean that something that has transpired here to-day will affect the testimony that you are going to give?

Mr. Jones: Yes.

The Court: You don't know who the witnesses are and you will have to look into this matter?

Mr. Jones: Yes. In other words, I ask your Honor to make an order, as is so common in this 1820
district, allowing me the time indicated within which to close the taking of depositions in evidence on my side. That is the universal practice here, never denied by a judge, to my knowledge.

The Court: That order has been entered, giving you a month to take testimony. But you were asked yesterday whether you would give a list of your witnesses, and you said you would, and you said so again this morning.

Mr. Benedict: The witnesses that you reserved, whom you didn't examine, whom you would have introduced in the examination in chief.

Mr. Jones: That is about it; I can give a list of 1821
the witnesses, except for what has transpired in the progress of the case, and to-day especially, that I would have called before your Honor. That is all the list I can give.

The Court: What you say now is that there are witnesses whom you must call to meet the case made by the claimants to-day, and the names of those you can't give?

Mr. Jones: Not entirely. There is another witness whom I think I shall have to get from abroad;

1822 I can put his name on the list, but I really don't know where he is.

The list is produced.

Mr. Jones: I should like to have the same requirement of counsel on the other side. This is a rule that works both ways. This is an attempt, if your Honor please, to cut off full proof of this case.

Mr. Benedict: I can't give the list now. It is stated that the witness Wilbur is still on the *Oceanic*.

The Court: Mr. Jones asks you to give a list and you say that you can't?

Mr. Benedict: I can't give it now. I don't say
1823 that I won't give the list to the parties, but I say at this moment that I haven't been called upon for any such thing, and it is sprung upon me, and I don't know—there are many counsel in the case.

Mr. Jones: In view of the situation I ask that the order stand that I shall have one month within which to close my testimony.

Mr. Benedict: I so stated.

The Court: I say that so long as the other side are unable to limit themselves in the matter of witnesses then you need not be limited.

Mr. Benedict: Here are seven or eight counsel in the case. I will give Mr. Jones a list of witnesses
1824 within a reasonable time, but it has been sprung on me and I can't at this time.

The Court: If it seems, when the testimony is taken, that there is anything to complain of, I shall have to pass upon it. I can't provide for every little jealousy.

Mr. Benedict: I can't give it to him before the middle of the week.

Mr. Jones: I will agree to exchanging a list with Mr. Benedict of all witnesses, within a week.

The Court: I have made a memorandum that it is agreed that there shall be an exchange between

counsel of the list of all witnesses to be produced 1825
on each side, within one week from to-day.

Mr. Jones: In view of that disposition of the case I would greatly prefer, in view of my physical condition, not to proceed with any rebuttal to-day. I came here after a great effort, and really against advice of my physician this morning. I didn't sleep last night and as we can cover this whole ground out of court I would a great deal rather, for my personal convenience, not call any witnesses in rebuttal to-day.

The Court: Do you mean you do not feel able to go on?

Mr. Jones: I do not, and I would not make that 1826
proposition except in view of the suggestion of your Honor to take the rest of the testimony out of court. As matter of fact I have been practicing law for twenty-four years, and this is the second occasion that I recollect that I have ever asked for any indulgence on the ground of physical weakness or sickness. I have resolutely brought myself here every day, and we have now reached a point where the case is sufficiently outlined for your Honor to understand it, and under the circumstances I make the application, on the ground that I am not well enough to go on.

The Court: Very well. If you will fix a time I 1827
will come down here and hear you in the case when you get through your various examinations, and if there is any question which can be briefly disposed of and without delay I will stop in Customs Appeals and listen for one hour.

Mr. Murray: I should like to put in a brief.

The Court: I wish you would. I would like all the assistance from briefs that I can have in this matter. If you will help me to an understanding of the material points I will look it all up before I come down for the hearing.

By order of the Court the rest of the testimony is to be taken out of court.

1828 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, for Limitation of Liability.

1829

DEPOSITIONS taken out of court, by the order of the Court, at the office of Edward K. Jones, Esq., Nos. 49-51 Wall Street, New York City, on the 16th day of October, 1901.

Present—EDWARD K. JONES, Esq., for the petitioner;

E. G. BENEDICT, Esq., for George Deslions *et al.;*

A. GORDON MURRAY, Esq., for W. C. Perry *et al.;*

G. T. GOLDTHWAITE and HERBERT NOBLE, Esqs., for Harry S. Jones and Alice B. Evans as administrators (4 cases);

1830

Messrs. BULLOWA & BULLOWA for Louis Delfonte, as administrator, etc.

PAUL SIMON, recalled for further examination, testifies through the interpreter:

By Mr. Jones:

Q. Have you at my request made up a table showing the officers and crew of the *Bourgogne* with marks showing those who were saved? A. Yes.

Q. Is this the list? A. Yes. 1831

Q. The cross marks there indicate those who were saved, and those that are not marked, if I understand by the memorandum are those that were lost? A. Yes.

The paper is offered in evidence and marked Petitioner's Exhibit 14, of this date. (Page 1199.)

Mr. Benedict objects as immaterial.

Q. Have you also inquired among the crew who are now present in New York to ascertain the names of the men on the watch besides the captain at the time of the collision? A. Yes. 1832

Q. This watch, if I understand it, is composed of two sets, the deck watch and the engine room watch? A. Yes.

Q. From that inquiry will you state who the deck watch were, giving their names and positions?

Objected to as hearsay.

A. Captain Deloncle, Dupont, who was officer of the watch; he was the second captain; but he was officer of the watch.

Q. As you go on from the captain down, add the statement whether or not the particular person that you mention survived or was drowned? A. Captain Deloncle was lost; Dupont also is dead. (Reading from memorandum.) Petiot was boatswain; he was saved. 1833

Mr. Laisne rises from his chair and speaks to witness and Mr. Benedict objects to anybody outside speaking to witness while he is on the stand.

Q. Do you know where Petiot is? A. He is not here; he is in France. Duval, head quartermaster, head helmsman, he is dead; Corré, seaman, he is

1834 saved; he is in China. Luco, seaman, dead; Vandelet, he shouldn't really figure on this list, he belonged to this watch, but he died before the accident. La Bris, seaman, he is here; Le Louarn, seaman, he is here; Allain, seaman, he was saved; he is not here. He is in the West Indies. Le Maquer, seaman, he is here; Poupin, he was lookout; dead. Valere, seaman; he is here. Le Gall, seaman, dead; Moyon, seaman, dead. Blouin, lookout, dead. Allain, seaman, dead. Le Breton, seaman, present here. Denis, seaman, he died after the collision. Pierres, seaman, not here; I think he is either in Havre or in Dunkirk. That is all.

1835 Q. Have you a similar table with reference to the men that were on duty in the engine room? A. Yes, I have one which has been drawn up from the examination.

Witness is again addressed by Laisné, and counsel for respondents objects to witness having consultations with other persons while he is on the stand.

A. Mr. Fleury was a cadet; a naval cadet; he was on board; he is dead; he was on the bridge with the officer of the watch.

Q. In speaking of those that are dead, except the
1836 one you have particularly mentioned as having died before the collision and those you mention as having since died, you mean that they perished in the collision; is that right? A. Yes; the cross on this paper does not signify anything.

Mr. Jones offers the list in evidence, and it is marked Petitioner's Exhibit 15, of this date. Taken subject to objection. (Page 1203.)

Witness produces his memorandum, from which he has been reading, and petitioner's counsel offers it in evidence. It is marked Petitioner's Exhibit 16, of this date. (Page 1204.)

The witness: These are just merely rough mem- 1837
oranda.

The paper is taken subject to objection, as immaterial and incompetent, and no proof of the facts therein stated.

Q. Something has been said at the trial of this case of the omission of the company to maintain lifeboat drills on board. I wish you would state what, if any, drills the company requires and what, if any, drills have taken place under your observation on the *Bourgogne?* A. On Thursday, before the departure of the vessel, I inspected, myself, all the boats with their outfit; all that was in the boats, to see whether everything was in good condition. 1838
I found that everything was in good condition; that the davits turned properly, that the blocks worked properly, that the tackles were in good condition, and that the chocks could be properly handled, that is to say that they fell down properly; and the voyage that preceded this I had the boats put into the water myself. Now, coming back to the last voyage after the inspection made by me I had, in company with the second captain and the carpenter, all the sluices and water tight bulkhead doors tried, and this is always done before their departure, in order to see that everything is in proper shape.

Q. Is there any order or regulation of the com- 1839
pany with respect to lifeboat drills at sea? A. Yes, there is a requirement.

By Mr. Benedict:

Q. In writing? A. I think there must be something on paper, that the boats shall be inspected once on the voyage; not, however, that the boats shall be put into the water. The same as they also govern the apparatus for extinguishing fire.

Mr. Benedict moves to strike out the answer as not the best evidence, the regulation itself should be produced.

1840 Q. I wish you would state, either from memory or if you cannot remember, by reference to this certificate, marked Petitioner's Exhibit 17, October 15th, 1901 (Page 1204) just what examination was made of *La Bourgogne* at the time on the 18th of June, 1898, the time indicated in this certificate. In the first place can you remember? If you can't remember the particulars from memory you can refer to this paper?

Objected to unless the witness was present at the examination.

A. Yes, I am the one who made the visit.

1841 Q. Now state what examination was made, and the result of each examination under the separate heads?

Mr. Murray objects if the witness speaks from memory he should speak without the paper; if he speaks from the paper, the paper speaks for itself.

Q. Can you remember the particulars of that examination and the particulars of the result of the examination, without reference to this paper, so as to give them in detail? A. In general, yes.

Q. Then give them generally. A. The engine was examined by the technical engineer.

1842 Q. Under your supervision? A. No; that is his department.

Mr. Murray objects to this witness testifying as to what the engineer did.

Q. Go on. A. I examined everything which concerned the boats, as I have just said, the closings of the watertight doors, the fire extinguisher; I also visited every part of the ship where people were lodged, both passengers and crew, the places where the provisions were put, and I examined the ship in

every corner, to see that everything was clean. I had the crew stood up in line, and had them examined to see if they were healthy and properly clothed. It was a sort of a military inspection. If you wish any details I am ready to answer if you will ask the questions. 1843

Q. Just go on and tell what you can recollect about the details of the inspection and the result, independently of this paper? A. I have just told all that; I just said that I went over the ship; looked around her all over, everywhere except as to the engine room; but that is a matter that is outside of my function. But I had the sluices, etc., in the engine room examined, and had them worked also. When I speak of the sluices in the engine room I mean the watertight doors. We call them sluices in the engine room; but on deck we call them watertight doors. 1844

Q. You may refer to the paper itself and state whether or not it refreshes your recollection with respect to anything that you have not been able to remember?

Same objection as before.

A. The engine was tried; the boilers were in good condition; spare pieces for the engine were all on board; the holds in the coal bunkers were all in good shape; they were examined and everything was clean. 1845

Mr. Noble objects, and wants the fact drawn sharply to the witness's attention that the question was that he is testifying from memory, after refreshing his recollection from looking at the paper.

Mr. Murray objects further that he is testifying to something of which he said that it wasn't in his department, and he is not competent.

Mr. Benedict: I want to know if he is just reading the paper.

Mr. Jones: You can ask him that on cross-examination.

(Answer continued): The pumps were in good condition; the main pumps; the small pumps and the fire pumps were also examined; the sluices, the water-tight doors were examined and inspected; the boats were inspected and examined, their apparatus moved, the rudder and the wheels, etc., which turn in were examined; everything for anchoring was examined; the telegraphs and speaking tubes for transmitting orders were inspected, the hull was painted four months before; it was painted every six months. The plans and drawings, etc., which belong to the ship on board, were on board; everything concerning the compass was examined; the insurance policies and the ship's register, all those documents concerning the ship were on board. After the inspection had been finished the captain was asked whether he wanted anything done, whether everything was all right, and he said No, he didn't want anything; everything was all right. The chief engineer was questioned and said the same thing. The general agent had no requests to make, and found everything in good order, and the persons who were present signed the certificate; myself, the marine superintendent, Captain Deloncle, the scientific engineer, and the general agent of the company. The names that I have given there were Captain Deloncle, the marine superintendent's, my own, the scientific engineer, Mr. Lannes, and the general agent, Vie.

Q. Are you familiar with the signatures of these persons, other than your own? A. Yes.

Q. Are they the signatures that they purport to be? A. Yes; those are the signatures.

Q. After the examination and when the *Bour-*

gogne went to sea on her last voyage from Havre, 1849
state in general her condition as to seaworthiness.

Objected to as calling for a conclusion.

A. She was perfectly seaworthy.

Q. State whether or not there was anything omitted?

Same objection.

A. No; nothing.

CROSS-EXAMINED BY MR. MURRAY:

Q. Of those lists of engine room men, of the persons who were saved, do I understand that they 1850
were all on duty at the time of the collision? A. Yes.

Q. Tell me which ones are present now? A. Fortin; if you will have the men brought in here I will pick them out.

Q. I want you to state from that list which ones are here? A. Calvary, Voisin, that is all; I don't see any others; three; and Julien—the others are dead or absent. That is one, Julien, he is alive. That is all; all the others are dead. There were only four in that watch; four who are alive.

Q. Where is La Petit? A. I don't know where he is; there must be something to show somewhere. 1851
(Laisne states.) It seems that he is in France.

Q. Where is Josef Pironnec? A. He is here.

Q. Isn't it Julien Pironnec who is here? A. He is absent in France; or perhaps he is navigating somewhere else; he is in France or abroad.

Q. Where is Nicolas? A. He is either in France or at sea.

Q. So that you were mistaken when you said that all but three men of this watch were dead? A. It is possible that I am mistaken; this is a correct list. I haven't such an astonishing memory as to carry

1852 forty names in my head; this list is entirely correct; it is possible that my memory deceives me.

Q. You didn't make up this list? A. I had it drawn up.

Q. But you have no idea from your personal knowledge of what has become of those men? A. I know what is on this list; I have not except from what is written on the list.

Q. Are these men, Joseph Pironnec, Nicolas, Le Julian, Le Petit Jean, are they still in the employ of the company? A. I don't know.

Q. Do you know whether this man Le Petit Jean was ever familiarly known as the Little Mousse?

1853 A. I am ignorant as to that detail; it would surprise me, because they don't have any boys in the engine room.

Q. Where is Petiot? A. I think he is in France.

Q. Is he in the employ of the company? A. No.

Q. When did he leave the employ of the company? A. A year ago, perhaps.

Q. Petitiot was on deck, in the watch, wasn't he, at the time of the collision? A. Yes.

Q. Have you any idea where he is? A. I can't say exactly.

Q. You could reach him if you wanted to? A. He can be hunted for; he can be found if he is still

1854 in France; he can't be forced to come here if he don't want to; he can be asked to come for that matter.

Q. Corre; when did he leave the employ of the company? A. I can't say exactly.

Q. Is he out of the employ of the company? A. I wish to explain that the crew are shipped for each voyage; after the voyage, if they wish to remain in the service, they do sometimes, but they are free at the end of the voyage.

Q. How do you know that Corre is in China? A. Because we have made inquiry for him in Havre, and that was the information that we received.

Q. Were you present at the inquiry before Com- 1855
mander Aubert? A. No.

Q. Have you ever read the testimony that was given before Commander Aubert? A. No.

Q. Did Corre make a report to you with regard to the accident? A. No.

Q. You never asked the man on the bridge anything about it? A. No; that wasn't my business.

Q. You were marine superintendent? A. Yes; but I wasn't at that time.

Q. You weren't marine superintendent at the time of the accident to the *Bourgogne?*

Mr. Jones: The question of the counsel is as to 1856
the interrogation of the witness after the accident.

A. I was the marine superintendent for Havre only at that time; now I am in Paris, I am head of the whole business.

Q. Were you on duty at Havre in 1898 to receive in Havre the official report of the accident to the *Bourgogne?* A. The commander didn't make any official report, because he was dead.

Q. (Read to witness.) A. There was no report drawn up of this; the accident was learned of through the New York agency; there couldn't be any official report of this, because those who should make the report were dead; there were investiga- 1857
tions which were made by the marine department. The judicial investigation, the Government department, made the investigation. Whenever a ship is lost the government begins by making an investigation.

Q. But the Compagnie Generale Transatlantique took no steps immediately after the disaster to the *Bourgogne* to learn for itself the particulars of the disaster? A. No.

Q. You say that that was the custom of the com-

1858 pany, not to make any investigations except what the government made?

Objected to on the ground that the witness has not made any such statement.

A. I never said that.

Q. What did you say then? A. I said that the Compagnie Transatlantique didn't make an immediate investigation, because there was nobody to be called to make an investigation of. The survivors only arrived two or three months after.

Q. But they were not interrogated by the company? A. That I can't say because I was not in
1859 Havre at that time.

Q. Where were you at that time? A. In Paris, when the survivors arrived; I left Havre at about that time.

Q. Was there any one in Havre whose duty it was to make an investigation of the facts of the collision, by the company? A. Probably.

Q. Who was it? A. It was Mr. Vie.

Q. Did he make an official examination of these survivors? A. I don't know; I wasn't there.

Q. You were in charge of the navigation of the company's steamers though after that, at Paris about that? A. Yes.

1860 Q. How long had you been in Havre prior to 1898, on duty there as marine superintendent? A. Eight years.

Q. Do you recollect the collision of the *Touraine* with the bark *Sully?*

Objected to as immaterial and as having been ruled out by the Judge on the trial of the case.

A. Yes, I recollect that event.

Q. Was there an investigation made with regard 1861
to that collision by the company?

Objected to as immaterial, irrelevant and inadmissible.

A. I don't know.

Q. Was there any one who could have done such a thing except the marine superintendent, whose duty it would have been? A. No.

Q. Do you recollect a collision that Mr. de Jousselin had when he was commander either of the *Champagne* or *Bretagne?*

Objected to as immaterial, inadmissible, and irrelevant, and as involving subject matter 1862
which the Judge on the trial of this case ruled out.

A. I don't recollect all this matter; I came here to testify with regard to the *Bourgogne*, not the things that happened to the *Champagne* and the *Bretagne*.

Q. But as marine superintendent you never made any investigation as to those two accidents? A. I don't answer that question.

Mr. Benedict: We insist upon his answer, or move to strike out the whole testimony.

The Witness: You can go ahead and strike it out; 1863
I don't recollect about those matters; you can strike it out if you wish to.

By Mr. Benedict:

Q. Do you take the position that you refuse to answer the question? A. No.

Q. Well, answer the question then. (Repeated.) But as marine superintendent you never made any investigation as to those two accidents? A. No, I did not make any examination into the facts of the collision; that is the reason I don't recollect.

1864 By Mr. Murray:

Q. With regard to the accident to the *Bourgogne*, I understand you to say that none of the survivors were questioned by any of the officials of the company.

Mr. Jones: He has already stated that over and over again, that there was no investigation made by the company.

A. I didn't say that; I said I didn't know; I didn't do it.

Q. Where is Alain? A. I don't know; he was one of the seamen. He is on board the *Labrador* (ex-
1865 amines list). I said already that he was in the West Indies; he is on board of the *Labrador;* she is one of our postal boats that run on the West Indies line.

Q. Do you know where he was stationed at the time of the accident to the *Bourgogne?* A. Just before the collision my information is that he had gone down into the engine room. He had been sent down there.

Q. Did he carry a message from the captain to the engine room, or the man on the bridge to the engine room? A. I can't say why he went.

Q. What was your information about it? A. The
1866 men who were there told me that he had gone down into the engine room. His comrades told me; I asked them here about that.

Q. Who did you ask about that? A. Mr. Laisne, he is present.

Q. How did Mr. Laisne know about that? A. He was on board.

Q. He was in bed asleep at the time, he has testified? A. You have only got to ask Mr. Laisne and he will tell you. I can't tell you, because I wasn't there.

Q. But you never followed it any further than to 1867
take Laisne's word for it? A. That is right.

Q. Where is Pierres? A. He is in France.

Q. Is he in the company's service? A. No.

Q. Do you know where he is in France? A. The company tried to find him, but he wasn't there; he was gone away to some place or other; it may be that he is now in Havre or Dunkirk; when we made the inquiry he was on board a ship that didn't belong to the company.

Q. Do you know where he was stationed at the time of the collision? A. I do not.

Q. Have you any idea who was at the masthead at the time of the collision, in the crows'-nest as 1868
lookout? A. I don't know; I was in Havre and I wasn't on board the *Bourgogne;* I don't know what took place on board the *Bourgogne.*

Q. You have testified a good deal as to what took place? A. Because I had heard those who are present here; they have told me things.

Q. Did the inspection that you made, together with Mr. Lannes and Mr. Deloncle and Mr. Vie, was that made pursuant to a regulation of the company? A. Yes.

Q. You say that you made one of these before every voyage? A. Yes.

Q. This was made then, this Proces-Verbal de 1869
Visite, was made for the 27th voyage of the *Bourgogne?* A. Yes.

Q. Where did that voyage begin? A. In Havre.

Q. What was the number of the voyage upon which the *Bourgogne* was when she was lost? A. It is written on that certificate.

Q. What is it? A. (Examines certificate.) 27th voyage.

Q. She left Havre on the 18th of June? A. (Examines certificate.) Yes; as written there.

Q. And departed from New York July 2nd? A.

1870 It was a Saturday; I haven't made the calculation; it was a Saturday.

Q. She was lost on the 4th of July? A. Possibly.

Q. I ask if this was made pursuant to a regulation of the company? A. Yes.

Q. A written regulation? A. Yes; in consequence of orders which are written in a book of instructions which are given to the agents of the company; orders which date from the beginning of the company. It is done for all of the ships.

Q. What is the name of this book of instructions? A. It has no name, it is a book of orders.

1871 Q. How long since you have seen a copy of that book? A. I haven't seen it; I haven't seen the book of instructions. The book of instructions of the company is a book a foot thick. There are a great many orders in there; I can't recollect them all; it would be impossible; I knew it existed.

Q. Have you read the regulations with regard to this inspection? A. No; I knew it; I didn't need to read it. I knew that it must be done; it was written; I made it.

Q. Where is this record kept after it is made? A. In Paris.

Q. How long back are they kept? A. It is very
1872 variable; when they are of no importance they are filed in the archives; there is no rule.

Q. Are they filed in the same archives as the logbooks? A. No; the logbooks are larger than those, and one is put in one place and another in another; I can't tell you in which compartment they are filed.

Q. But as a general regulation both the logbooks and this Proces-Verbal are kept for a period of time ordinarily, at Paris? A. Yes.

Q. With regard to the inspection that you made, of which this Proces is the report, you simply examined the equipment of the ship? A. I examined

everything; I examined the crew as well. The out- 1873
fit and everything.

Q. But the engine room was no part of your department? A. I overlooked the whole ship to see as to the good condition of everything, except the engine, referring particularly to it as an engine; I am not an engineer.

Q. How long did that examination take? A. It lasts generally three or four hours at least; it is a pretty long examination.

Q. How many small boats did you have taken off of the davits and examined at this examination? A. All; ten; there are two that have no davits; they are hung up. 1874

Q. Were they all detached after they were put into the water, from the pulleys or ropes that put them into the water? A. Not that voyage, no; the voyage before they were; the voyage before that they were put into the water, they were completely cast loose from their tackles and the men were put into them and they were manœuvred under sail and with oars.

Mr. Murray moves to strike out the answer, as the witness was asked about this special examination.

The Witness: At the time of this voyage the boats were not put into the water. 1875

Q. Any of them? A. Not that time, no. It is written there; the davits, the blocks, all their parts were examined. They were not put into the water; but the voyage before that they were put into the water, as I have stated.

Mr. Murray moves to strike out the part of the answer which refers to the voyage before.

Q. Were the lifeboats, etc., covered with tarpaulins? A. When they are at sea, yes.

1876 Q. I am talking about this examination? A. No, they were taken off, otherwise you couldn't see the boats, because we examine their oars, their sails, their masts, everything.

Q. Were the tarpaulins taken off of all of the boats at this examination? A. Yes; the tarpaulins were taken off before the inspection, in order that they may be seen and inspected.

Q. You had the crew, at the time of this inspection, all drawn up, you say? A. Yes; what I call an inspection.

Q. And you examined every boat? A. Yes.

Q. Had the blocks knocked out from under them?

1877 A. Yes.

Q. How many men did it take to do that, to each boat? A. They are on hinges; one man will capsize them.

Q. Did one man capsize every boat at that examination, one man at each boat? A. No; one man before and one behind; there are two chocks, one forward and one aft; there is a man at the bow and a man at the stern.

Q. Did you examine the sails, the masts and oars? A. Yes; and the barrels of water and the boxes where the food was in, the compasses——

Q. Of each boat? A. Yes.

1878 Q. And you examined the clothes and the health of all of the crew? A. Yes; I am no doctor; when you speak of health I looked at them and saw whether they seemed to be in good health; there is a doctor outside of me; I was followed by the captain, the second captain, the doctor and the chief engineer and the purser, while I was making this inspection; and every time it is done it is done in exactly the same way.

Q. Did you examine the life rafts at that same time? A. Yes.

Q. What was their condition? A. They were in

good condition; they are not hard to examine, for 1879
that matter.

Q. They were not put overboard? A. No; you have only got to cut their lashings to put them overboard.

Q. They weren't unlashed? A. No; we just cut the lashings; that is all that has to be done.

Q. Did you examine the oars, etc., of those life rafts? A. Yes, I saw that the rafts had oars; were furnished with oars; I saw it with my own eyes.

Q. What tools were on board each small boat? A. There was a hatchet, there were quite a number of articles in the boats. I don't remember them one by one. 1880

Q. After you got through with the examination of the deck where did you go? A. I visited the saloons and the cabins. I commenced my inspection at one end of the ship and I finished on the other end and when I got through I went away.

REDIRECT-EXAMINATION BY MR. JONES:

Q. Reference has been made to Petiot. Is he still in the service of the company? A. No, he is not in the service of the company.

Q. How did he come to leave the service of the company? A. He was sent away.

Q. For what reason? A. For insubordination. I 1881
think he had a dispute with one of his superior officers.

Q. When was that, about when? A. I think it was last year; several months ago.

Q. There was an official investigation of the collision under the order of the minister of marine, was there not? A. Yes.

Q. That is the inquiry that has been referred to here so often as that made by Commander Aubert? A. Yes.

1882 RECROSS-EXAMINATION BY MR. MURRAY:

Q. You were not present at the examination? A. No.

Q. Was the company represented before Commander Aubert? A. I presume that their attorney, their legal adviser, was there; that is no part of my business; that is the legal department; I am not connected with that.

Recess.

CHARLES FORTIN, being duly sworn and examined, through an interpreter, as a witness for the
1883 petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. Rigel, Cotes du Nord, France.

Q. You were one of the crew of the *Bourgogne*, were you not, when she was lost? A. Yes.

Q. In what position were you occupied? A. Fireman.

Q. Were you on duty in the engine room at the time of the collision? A. In the fire room; not in the engine room.

Q. What was the condition of the furnaces, and
1884 ash boxes before the collision? A. About three-quarters of an hour before the collision the doors of the ash boxes were in their places; closed; to cut off the draft.

Q. What was the condition of the fires? A. The fires were very low; instead of being full blast as when we are going at full speed.

Mr. Benedict moves to strike out the last clause.

The Witness: Just enough to keep them lighted.

Q. Where were you when the collision occurred? 1885
A. I was in the fire room.

Q. When did you first know of the collision? A. We heard the shock and felt the ship tremble, and we inquired what had happened, and the answer was made that there was a collision. The chief of the watch said close the water tight doors, and inside of five minutes the water tight doors were closed. I remained below for a quarter of an hour or ten minutes—the ship took a list, and I was firing on the starboard side, and I came up on deck, by the ladder which is there; I had to get up by the ladder.

Q. By that time how high was the water in the engine room? A. I can't tell you how much; there 1886
is a flooring that is up about that high (indicating about five feet); down below this flooring the water was up to your knees; I didn't stay there to see how much more came in.

Q. Had any water reached the fires when you left the engine room? A. No; it was just beginning to come up in the ash-pit. There are two furnaces up above and two down below, and the water commenced to come up into the ash box down below.

Q. Did you get any order to leave the engine room? A. There was a whistle blown.

Q. Anything else? A. I waited for the whistle to be blown and as soon as I heard it I went up. 1887

Q. What did this whistle signify? A. I didn't understand exactly; what it meant I don't know; they blew the whistle and I didn't understand it, and I went up.

Q. Did you go back again? A. No; before I went up the ship commenced to take a list and I didn't go back down below.

Q. How about the other men in the fire room, did they leave at the same time? A. Some stayed and some came up with me. Some were running around

1888 from one side to the other; I didn't notice where everybody went.

Q. Did you see anything of the captain on the deck? A. No, I was aft; I belonged to boat No. 9 and I went aft.

Q. Did you hear the captain say anything to the passengers or give any orders? A. No.

Q. What boat did you belong to? A. I belonged to No. 9. In Havre the boats were taken out and put in the water, and the boats are examined also here in New York; and I belonged to that boat.

Mr. Murray moves to strike out the answer as not responsive.

1889

Q. How about the practice of the crew in lowering lifeboats at sea; did you have any such practice on the *Bourgogne?* A. Yes; twice a week; every one of us at his boat, stationed, twice a week; Sunday and Thursday the boats were inspected.

Q. I am not asking you about inspection. I am asking you whether any drill was practised by the crew in detaching and lowering the lifeboats? A. Before we left the boats were got out and got down; but not at sea.

Q. What did this inspection that you speak of consist of in regard to the lifeboats? A. We went there with our life buoys and placed ourselves at

1890 our posts.

Q. Were the tackles operated, or the chocks removed at that inspection? A. All the chocks were capsized and we hoisted the boat out and lowered it down. The davits were turned out inside and out, turned inside and turned out in their sockets; to see if everything worked.

Q. How often was that done at sea? A. Thursday and Sunday. We put ourselves to our stations with our life buoys Thursday and Sunday.

Q. I repeat the question: How often was this

drill at which the chocks were removed and the 1891
davits operated and the boats lowered at sea? A. Thursday and Sunday.

Q. After you got on the deck after the collision just describe what you saw and what you did, and make your statement in your own way? A. As soon as I got on deck I went to my boat; when I got on deck the boats were there and there were about ten people in them, or so; I got hold of the davit and I got into the boat. I stayed there in the boat until with the list of the ship the water was touching the boat; the ship was almost capsized, and the boat was touching the water.

Q. What did you do with regard to lowering the 1892
boat, if anything? A. We lowered her down a little, and with the little swell that there was we unhooked the tackle.

Q. Did you finally free the boat from the steamer? A. Yes; we unhooked the two tackles and the boat was lifted up a little by the water and we got clear of the ship.

Q. Did you save any people? A. Yes; we were 57 in the same boat.

Q. Who were they? Passengers? A. They were passengers; waiters, firemen, seamen, everybody that happened to be there; the people who were there.

1893

Q. How long after that did you reach the *Cromartyshire?* A. I can't tell you exactly; I didn't have any watch; when the fog lifted we saw the sailing vessel.

Q. What did you do with the people in the boat? A. We got on board the sailing ship.

Q. Did you go back for any more passengers in that boat? A. No, I didn't go; two boats went back to save people.

Q. Did your boat go back? A. I can't say whether she did or not; there was one of the boat and a whale-boat went back.

1894 CROSS-EXAMINED BY MR. MURRAY:

Q. Were you examined in the case of the *Cromartyshire* against the Compagnie Generale Transatlantique in London? A. No.

Q. You had been examined, however, at Havre before Commander Aubert, had you? A. Yes, the office of the Marine Department there.

Q. Have you talked with Captain Simon with regard to the testimony you were to give here? A. No.

Q. Or with the counsel, or with any persons here with regard to your testimony? A. No.

Q. Have you read the testimony that you gave
1895 before Commander Aubert, or had it read to you? A. No.

Q. So the only examination that you have ever had with regard to the facts of this incident was before Commander Aubert and here now? A. I was in London, but I wasn't examined there.

Q. Have you ever made a statement to the company with regard to the accident, any officers of the company? A. No.

Q. Was there but one fire room in the *Bourgogne?* A. Yes; more; there were four; one forward, two amidships, and one aft.

Q. Are they separated from each other, and how?
1896 A. Yes; there are four watertight bulkheads; there was one between each fire room.

Q. Which one were you in? A. The starboard one forward.

Q. How many boilers were in the fire room in which you were? A. Four boilers.

Q. Was there a fire under each boiler? A. Yes; but not very much.

Q. You are speaking of the fires in the fire room in which you were at the time? A. Yes, there was fire; they were very low; we hadn't steamed them up for a long time.

Q. How long since you had steamed them up? A. 1897
Three-quarters of an hour; we hadn't touched them; we put in a shovelful of coal now and then, but we hadn't been pushing them.

Q. Was there steam on the boilers? A. Yes; I don't know how much.

Q. Was there a gauge to each pair of boilers? A. There were four steam gauges.

Q. One to each boiler? A. One steam gauge to each boiler.

Q. How many boilers all told were on the *Bourgogne*, if you know? A. I think she had twenty-four (making calculation), two forward and two aft; that makes four, she had twelve boilers. 1898

Q. How many men were in the particular fire room with you? A. Twelve; we were twelve all told; there was a fireman to each boiler.

Q. I understand you to say that there were twelve firemen in the room in which you were, firing the fires? A. No; in the compartment where I was we were four; four in each compartment; in each fire room.

Q. How were the fire rooms connected? A. In the middle; between the boilers; there is a passage-way.

Q. You don't know of anything that happened in any other fire room except the one you were in? A. 1899
No, I couldn't say in the other; the water tight doors were closed; I don't know what happened in the other fire rooms.

Q. Did you fire at all of the fires in the compartment in which you were? A. No; there had been a good while that we hadn't touched the fires at all.

Q. (Repeated.) No, I didn't; I took care of two of them; the others took care of the others.

Q. So that you don't know what happened to anything except the two fires you were attending? A. I can speak of the other fires there.

1900 Q. But you didn't touch them? A. No, nobody touched them.

Q. Who were in the compartment with you? A. We were four men; two of us were saved and two were drowned.

Q. I asked who were in the compartment with you? A. There was one who was drowned; his name as Le Cort; and the other one who was drowned was named Quadon; the other who was saved was Hamel, he was saved with me.

Q. How did the water come into the fire room in which you were? A. I don't know; I din't see where it came in; I saw the water was rising, but I
1901 didn't see where it came in.

Q. Could it have come over any of the boilers? A. I can't say.

Q. Have you any idea how far the platform on which your fire room was was below the water line of the *Bourgogne?* A. I think we were down below the water line; considerably below.

Q. I ask if you know how far? A. I can't say.

Q. Do you know what was immediately above your boilers, the boilers in your compartment? A. Rooms; and grating to give air, to allow the air to come in.

Q. You have stated that there were boat drills
1902 at sea every Thursday and Sunday? A. Yes.

Q. What day did you sail from New York? A. Saturday at ten o'clock.

Q. What time of the next day was this boat drill that you speak of having? A. They were not made that Sunday; there was no drill that Sunday.

Q. Do you mean to say that at sea the lifeboats of the *Bourgogne* were put out twice every week? A. No, I said that we went to our boat station, but I didn't say that we lowered the boats away.

Q. Were the chocks capsized and the davits turned out at sea on those inspections regularly

twice a week? A. Yes; sometimes, not every time, 1903
but it was done sometimes.

Q. When was the last time it was done on the *Bourgogne?* A. Before she got in here to New York.

Q. (Repeated.) A. It was done Thursday before we arrived in New York.

Q. Were all the crew mustered for those boat drills? A. One of the watches was below.

Q. Do you know why the drill wasn't had on Sunday, July 3d? A. Because it had been pushed out; the davits had, just before we left; the day before; it had been gone through with just before we left New York. 1904

Q. Will you kindly tell me what you did when you went on deck and got into the boat No. 9? A. I didn't get into the boat right away when I went on deck; I stood there a few minutes for I didn't know where to go.

Q. How did you find out where to go? A. I didn't know where to go; first I went aft and then I came back and then I went to this boat, because it was my boat; that was my boat.

Q. Did you assist in putting the boat out? A. No, the boat was out before I got there, and there were some ten-odd people in it.

Q. Do you mean swinging out on the davits? A. 1905
Yes; it was swinging from the davits, but it was turned out; I was in the boat near the davit.

Q. Where was that boat? A. It was the second boat aft on the starboard side.

Q. Aft from what? A. It was the second boat from aft.

Q. How were the ropes that swung from the davits attached to the boat; how were the boats held on the davits? A. There was a tackle.

Q. How were they attached to the boat? A. There

1906 is an arrangements—there is a hook with a swivel on the block.

Q. How was that boat that you were in gotten loose from the davits? A. There is two or three turns of the tackle around the davit; you cast off those turns and pay out your tackle.

Q. And that lowers the boat? A. The weight of the boat causes it to go down.

Q. Did you unhook the block from the boat? A. The after one, yes. There were two men who helped me then; I was aft and I unhooked the after tackle.

EDWARD LAISNE recalled for further examination:

1907 By Mr. Jones:

Q. You have heard the testimony of Mr. Cammeau given in court? A. Yes.

Q. There is reference in that testimony to conversation with you? A. Where was it?

Q. When on board the *Bourgogne*, he states. Did you ever see him on board the *Bourgogne?* A. It is false; I would like to have Mr. Cammeau asked at what hour it was.

Q. State what, if any, conversation you had with Mr. Cammeau either on board the *Bourgogne* or afterwards on the *Cromartyshire* or on the *Grecian?* A. I had none.

1908 Q. Did Mr. Cammeau ask you, either on board the *Bourgogne* or on the *Cromartyshire* or on the *Grecian*, anything about the speed of the *Bourgogne?* A. I have never had any conversation with him; consequently he has never been able to ask me any such question. I never had a private conversation with him.

Q. Did Mr. Cammeau, either on the *Bourgogne* or on the *Cromartyshire* or on the *Grecian*, or anywhere, ask you why they didn't go slower in such weather, to which you replied, in his own words,

"It ain't worth while to slow down." A. Never; I 1909
am not in the habit of having conversation on board vessels on which I am with passengers; it is prohibited by the rule.

Mr. Benedict and Mr. Murray move to strike out the answer as irresponsive.

Q. Did Mr. Cammeau on the *Bourgogne* or on the *Cromartyshire* or on the *Grecian* or anywhere after this collision, tell you that they had been going fast, to which you replied, "If we had continued to go at that speed we would have arrived at one o'clock Saturday with such calm sea?" A. It is false. It is so much more false because none of 1910
the ships of the *Bourgogne's* type have ever been able to arrive at one o'clock Saturday.

Mr. Murray moves to strike out the answer.

Q. Did you, on board the *Grecian*, at or about the conversation just inquired about, get into a rage and show a disposition to strike Mr. Libré, as stated by Mr. Cammeau in his testimony? A. It is false; I don't get furious. I did have a dispute with Mr. Libré which lasted perhaps a minute; and I am ready to explain exactly what it was.

Q. Explain it? A. Mr. Liebré at a certain moment was standing up on one of the hatch covers to the hold of the *Grecian* making gestures and 1911
using words injurious to the officers of the *Bourgogne*, and addressing himself a little to me. I picked up his remarks, and if I hadn't done it it would have been a piece of cowardice on my part. Those men were dead at their posts, and therefore he had no right to insult them. I neither made a gesture nor a threat; it was only by word.

Q. Who was with Mr. Liebré? A. I don't know who he was. It was the first time I had ever seen him, that moment on board the *Grecian*.

1912 Q. Didn't you know that he had been on board the *Bourgogne?* A. Yes; I saw that he was one of the shipwrecked people.

Q. He was not one of the crew of the *Bourgogne?* A. No.

Q. Was the captain of the *Grecian* there at that time? A. I didn't know him.

Q. Did the captain of the *Grecian* take any part in what you were saying to Mr. Liebré? A. If the captain of the *Grecian* speaks French he might have heard what I said to Mr. Liebré; but he didn't interpose himself in any way.

Q. Mr. Cammeau says that the captain turned
1913 around and said, "I would like to see a sailor like that hung up to the mast." State whether or not the captain of the *Grecian* said any such thing? A. The captain of the *Grecian* had us eat with him in the messroom; the officers of the *Grecian* gave up their rooms to us and shook hands with us all before we left their ship when they said goodbye to us.

Mr. Murray moves to strike out the answer, as it does not answer the question.

Q. (Repeated.) A. I don't know; I don't speak English, and I didn't see him. If he speaks French
1914 —I didn't see him there; the whole thing didn't last more than a minute—two or three words; it was just a word and I left. Mr. Liebré is an enormous man; I am not big; I am a little fellow.

Q. Did the captain of the *Grecian* at that time or at any other time manifest any displeasure or disapproval of your conduct to you? A. No, I told you that he did not; I told you that he came to the break of the poop when he said goodbye to us, and shook hands with us all.

Q. Mr. Cammeau also says that there was dancing a little before two o'clock on board the *Bour-*

gogne in the dining saloon and that they were 1915
drinking champagne and the waiters brought it up on deck, and that you were there and witnessed these things yourself? A. My watch is from ten o'clock until two o'clock in the morning; I left the watch at quarter past two, just time enough to turn over my matters to the one who succeeds me; I go into my room, my cabin; I changed my clothes and without going out I looked out on deck; it was then quarter to three, and I turned in. At three o'clock I was asleep. As for leaving my watch, it is absolutely impossible for an engineer to do it; it is absolutely impossible for an engineer to leave his engine and go up on deck; he has too much re- 1916
sponsibility to do it.

As matter of fact did you see any drinking of champagne or dancing on deck or in the saloon of the *Bourgogne* at or shortly after two o'clock on the morning of this collision? A. Never.

Q. Is it practicable to see from the deck of the steamer into the saloon or the dining saloon? A. No; you cannot see through the ports. You can see into the smoking room, but you can't see into the dining saloon; you can see into the smoking room—but at the hour mentioned there nobody could see in the smoking room because the lights were out, closed up, dark.

1917

Q. Is that a regulation of the company? A. It is a regulation of the company and is executed literally at eleven o'clock.

Q. When Mr. Cammeau was on the witness stand I showed him a letter that he admitted having sent you, which was marked Petitioner's Exhibit 13, and he explained the reason why he wrote that letter, among other things was because you seemed to be in great distress lest you should lose your position. Did you at any time ever express to Mr. Cammeau any fear of losing your position and ask for his as-

1918 sistance? A. Never. I don't think that Mr. Cammeau is in such large relations with the company that he could help me in any way. Information against the officers of the company are from people on board the ship, and not from the passengers.

Q. Did you say to Mr. Cammeau at any time that if you had had a revolver you would have killed all the passengers that you could on board the *Bourgogne?* A. I didn't see him on board the *Bourgogne.*

Q. Did you say that? A. No, never.

Q. Mr. Cammeau also says that you wanted to attack somebody on the ship (meaning the *Grecian*)
1919 and that he kept you apart two or three times. State whether or not that is the fact? A. It is false.

Q. Did any such occurrence happen on any other ship or anywhere? A. No, never.

Q. Just state in your own way what, if any, communications or conversations you had with Mr. Cameau. You may relate any incident that you can? A. I never had any with Mr. Cammeau except that on the voyage coming back after we had been landed in Halifax, he was in bed in a cabin; he sent for me and begged me that if he had to remain sick in Boston that I would go and see his wife and tell her how he was. I promised that I
1920 would. It was a service that I could render, and he was a passenger, and I was willing to do it. That is all.

Q. You were about to say that you wanted to mention some incident a few minutes ago? A. Yes; I should like to explain that. I have already explained it in Havre. When I was on the raft with the shipwrecked people I got as near as I could to one of the lifeboats. There were about 12 or 15 men in this boat. As soon as I tried to get near to her they went away. Four or five times they did this, and finally they abandoned us. Seeing this, I

stood up on the raft and I sung out to them, "You are blind cowards. If I had a revolver here I would break your heads." The men who were on the raft with me spoke about that on board the *Grecian* and on board the *Cromartyshire*, and those are the words which have been imputed to me with the idea that I wanted to shoot the passengers. I don't know who was in the boat. It was only after I got on board the *Cromartyshire* that I learned it was the boat stolen by the Austrians. You can ask every man who was on the raft, and they all say the same thing as I did. Mr. Deprez was there. That is the incident which has been twisted around by whom it may concern. 1921

Q. In answer to a question on page 26 of your testimony you stated that the engineer on the watch kept the steam pressure very high so as to be able to give the maximum speed if it was called for. What do you mean by this; pressure in the boiler, or pressure on the engines? A. In the boilers. Pressure on the boilers; not in the engines. 1922

Q. What were the masts of the *Bourgogne* made of? A. Iron.

Q. Did they fall in the collision? A. No; they went down with the boat standing up straight.

Q. Were there any wooden spars connected with the masts? A. No, nothing but the rigging; wire rigging. 1923

CROSS-EXAMINED BY MR. MURRAY:

Q. What was the maximum steam pressure of the *Bourgogne's* engines? A. The pressure of the engine doesn't mean anything; the pressure is on the boilers; 11 kilos and a half.

Q. Is there any indicator in the engine-room to show what the steam pressure is? A. Four in the engine room and 12 in the firerooms.

Q. The four in the engine-room shows for how many boilers each? A. For all of them. It is the

1924 pressure that is taken from the steam pipes. There is one that indicates the pressure on boilers; the other where the high pressure enters; the other at the medium pressure; and the other low pressure. They are intended to show just exactly what each piston is doing.

Q. So there is one indicator for each of the four engines? A. There is only one engine on board.

Q. They are quadruple expansion engines, aren't they? A. Yes; there are four cranks attached to the same shaft; but it is only one engine; there is one gauge for each cylinder.

Q. Exactly. So that the first indicator shows
1925 the pressure of the boilers? A. Yes.

Q. What is the maximum steam pressure that is shown on that gauge? A. Eleven kilos and a half; there might be a little difference between the pressure shown in the fire room on the boilers and that shown in the engine room; because there is a slight loss between the two. There is sometimes 500 to 800 grammes; half to 8/10 of a kilo.

Q. How many boilers had the *Bourgogne?* A. Twelve.

Q. They were in how many compartments? A. Two.

Q. How were the boilers separated in compart-
1926 ments? Were there six in each? A. Yes; separated by watertight bulkheads.

Q. Were you present when Fortin testified? A. No; he was just getting through when I came here; but he was not talking about that.

Q. Fortin said that there were four compartments in which there were fires and boilers, and that he was in one with three other men? A. He got mixed up. There are four fire-rooms; there are two in each compartment; he got mixed up.

Q. So that Fortin was right when he said that he was in a compartment with only three other men? A. Yes; he was in one of the middle fire-rooms; I don't know where he was; I wasn't there.

Q. How far below the water line of the *Bourgogne* were the boilers? A. You will have to ask a scientific engineer (ingenieur); I don't know. That depends on the draft of the ship. Ask Mr. Lannes. He can tell you, probably. 1927

Q. When you got to the engine-room did you notice where the water was coming from? A. I didn't see any water in the engine-room first. The first water that I saw was in the forward fire-room.

Q. Did you notice where that water was coming from? A. Yes, inside on the starboard side.

Q. Was it coming over the boilers from the starboard side of the boat? A. About up even with the boilers, up by the covering of the boilers. You mustn't imagine that you could see the hole; you could see it come in. 1928

Q. Cold water, wasn't it? A. Sea water.

Q. Was it cold water? A. Certainly; it was sea water; couldn't have been warm. It was about twenty-six degrees centigrade sea water which came in from outside.

Q. How many of the boilers did the water strike, do you suppose? A. Two first; that is what I saw that moment when I got there; it was on two. After I saw water in other places.

Q. You say that it was the practice of the engineers never to have less than ten kilos of steam pressure? A. Yes; nine to ten; a few grammes one way or the other. Even when the engine is going slow, an engineer would always have ten kilos pressure when he is getting under way or maneuvring. 1829

Q. Have you any idea of the calculation of steam pressure in the English system? A. No.

Q. You don't know how many English pounds of steam ten kilos would be? A. I have a scale for that, but I couldn't tell it out of my head.

Q. Did you receive any letters from Cammeau? A. Yes.

Q. How many? A. One.

1930 Q. Did you ever see him in New York after the accident and you all got back? A. Yes; once; some time after.

Q. Where was that? A. Under the shed on the dock; he came and called for me.

Q. Did you take him on board? A. Yes; he came and called for me.

Q. Did he go with you on board? A. He came and called for me and I said, "Come aboard," and he did.

Q. Did you have any talk or conversation with him with regard to the facts of the collision at that time? A. No; he came to visit me. I asked him
1931 as to his health, and that was all. In informed myself as to his health. He didn't manifest at that time the disposition that he now does; he knew that I wished to render him service at that time and felt accordingly.

Q. What do you mean by that Cammeau didn't feel then as he does now? A. Because he was very polite then and thanked me, and said he was very grateful that I had been willing to interest myself for him. "I thank you for your kindness." I had no reason for running away from him at that time.

Q. What was it that made you get mad with Cammeau? A. I explained it just now; I haven't any-
1932 thing to change in the explanation. Mr. Liebre insulted my comrades, the officers of the ship, and I said that if I didn't defend them it would be a piece of cowardice on my part. It was certain that they had done their duty, and it was hard to see them insulted in my presence.

Q. What did he do that insulted your comrades? A. He said they were all cowards; there was no one on deck. The first thing I said was "Do you think they were playing cards while this ship went down? They were all at their posts, every one of them."

Q. How did you know they were all at their

posts? A. Because when I came up on deck I saw 1933
them; when I left the engine room I covered everything with a glance, and my comrades, the engineers, I saw them at the last moment and they remained there.

Q. Where did you first see Capt. Deloncle? A. I didn't see him on deck. I beg pardon, I didn't see him at the time I left the ship; I saw him perhaps two minutes after the collision.

Q. Where did you see him? A. On the starboard side; at the place where the collision occurred.

Q. Did Capt. Deloncle go into the engine-room? A. No; he went right up on the bridge. 1934

Q. Was he on the bridge at the time of the accident? A. I don't know; I was below and in my bed; I don't know; at any rate, a minute or so, a few minutes after, when I went up on deck, he was there.

Q. But you know they were all at their posts, notwithstanding the fact that you were in bed? A. Yes, in the engine-room; yes, the watch which was on service was there.

Q. How do you know that any of them were at their posts if you were asleep? A. Because the service on board the ship is divided into three watches. When each section goes on watch it 1935
doesn't leave it; if they should leave their watch they are subject to a very heavy punishment; and for the engineers it goes as far as imprisonment.

Q. So that is all you know; you simply deduce from those facts that the officers were all at their posts? A. I am speaking of the engine-room. When I went on deck and got up through the skylight from the engine-room I saw Mr. Rempler, the third lieutenant, who was at his boat; I saw Mr. Delinge, the second lieutenant, who was at his boat on the port side; at the moment that I jumped overboard I saw Mr. Pichard, the first lieutenant, who

1936 had succeeded in getting his boat out. That boat was full of people, passengers and others, and at the moment when he was going to push off one of the funnels fell down and crushed him, and he died right there on that spot under that funnel.

Q. This was at least twenty minutes after the accident? A. Yes.

Q. The ship had taken a big list? A. Yes. The boat tackles hadn't even been paid out; the boat was in the water; she was heeling over at least forty degrees. When you say that the funnel fell down, you have got to understand that the vessel was very much listed over.

1937 Q. Were all of these officers that you have mentioned here—were their boats on the starboard side? A. No; some were on the starboard and some on the port side; each at his post. There is a boat list on board, showing where each one of the crew should go and station himself.

Q. So that there were some of these officers who were on the port side of the vessel? A. Yes; their boats were on that side.

Q. They were just standing by their boats? A. No; they were trying to get their boats into the water. I saw them in the crowd.

Q. The vessel had taken a big list and it was im-
1938 possible to get them in the water, it has been testified? A. Yes; but in spite of that they were making efforts up to the last moment.

Q. Where was the captain at that time? A. I don't know.

Q. You didn't see him? A. No.

Q. Dupont? A. No; from the place where I was you can't see up on the bridge; it is impossible.

Q. Now, these officers who were attempting to get out boats you saw at a later time than when you saw Capt. Deloncle? A. No.

Q. Do you mean you saw Capt. Deloncle and all of these officers around their boats two to four min-

utes after the collision? A. Two minutes I saw 1939
Capt. Deloncle only; I only saw these officers at the moment when I left the ship. After I went up to notify the captain, by order of the chief engineer, I went down back again to my post in the engine-room. I only left the engine-room when it had to be abandoned; I went up through the skylight on the spar deck, with the aid of a few men. We got two life rafts overboard. I jumped overboard and cleared out, and you needn't ask me any more questions in regard to that. While I was at my duty down in the engine-room I can't tell what was going on on deck, and there is no use in asking me questions about it. 1940

Q. So that when you got mad with Liebre it was simply a matter of what you thought loyalty? A. Yes, I picked up the insult which they didn't merit.

REDIRECT BY MR. JONES:

Q. Have you at any time received any letters from passengers or others on the *Bourgogne* commending your conduct on the occasion of the collision? A. Yes.

Q. Have you those in your possession? A. Yes; I have kept them very preciously.

Witness produces the letters.

Objected to as absolutely immaterial. 1941

Mr. Jones states that the first one produced is from Albert Gaidot.

The Witness: When I got on board the *Cromartyshire* from the raft this gentleman acted as interpreter between myself and the captain of the *Cromartyshire*.

Q. Who is he? A. He sells sewing machines, I think. He was connected with the house of Albert Richourg, 20 Boulevard Sebastopol, near the Rue de Rivoli, Paris.

The first letter produced by the witness, together with the envelope, is marked Peti-

1942 tioner's Exhibit A18, B18, of this date, for identification.

The second letter produced by the witness, together with the envelope, is marked Petitioner's Exhibit A19, B19, of this date, for identification.

The third letter produced by the witness, together with the envelope, is marked Petitioner's Exhibit A20, B20, of this date, for identification.

Adjourned to Friday, October 18, 1901, at 11 A. M.

1943 NEW YORK, October 23, 1901.

DEPOSITIONS taken out of court, by the order of the Court, at the office of Edward K. Jones, Esq., Nos. 49-51 Wall Street, New York City, on the 23d day of October, 1901.

Present—EDWARD K. JONES, Esq., for the Petitioner.

MESSRS. BENEDICT & BENEDICT, for George Deslions *et al.*

A. GORDON MURRAY, Esq., for W. C. Perry *et al.*

G. T. GOLDTHWAITE, for Harry S. Jones and Alice B. Evans, as administrators (4 cases).

1944 A REPRESENTATIVE of Mr. KALISCH, for Josephine M. Chanut.

MR. STETSON, the interpreter.

FORTUNE VALER, being duly sworn and examined, through the interpreter, on behalf of the petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. Etel, in the Morbihan.

Q. That is in France, is it? A. Yes.

Q. What is your occupation? A. Seaman.

Q. When do you expect to return to France? A. If I am not needed any more here I expect to return by *L'Aquitaine.* 1945

Q. Which sails to-morrow? A. Yes.

Q. Were you on board of the *Bourgogne* at the time of her collision with the *Cromartyshire?* A. Yes.

Q. Were you on watch? A. Yes.

Q. What time did you go on watch? A. At four o'clock.

Q. How was the weather when you went on watch? A. It was fine weather.

Q. Where were you stationed? A. I was on the spar deck on the starboard side. 1946

Q. Were you on the lookout or doing anything particular? A. No, I was not on the lookout; I was helping wash the deck; we were washing down.

Q. Did the weather afterwards change? A. Yes, about a quarter past four.

Q. What was the change? A. Fog came about that time.

Q. Was it thick fog or a light fog? A. Thick fog.

Q. Did the *Bourgogne* sound her siren or whistle? A. At once, yes.

Q. Did you notice whether the lookout was increased? A. As soon as the siren commenced to blow they sent another man on the lookout; a second man. 1947

Q. Where? A. There was already a man in the crow's-nest and the second man was sent down on the topgallant forecastle, forward.

Q. How long did the *Bourgogne* continue to sound her whistle? A. Up to the time that we were collided with.

Q. Was there any change in the weather from the time the *Bourgogne* commenced to sound her whistle, at about a quarter past four, as you say, up to the time of the collision? A. The fog continued thick; you could hardly see.

1948 Q. What did you first know of the approach of the *Cromartyshire?* A. She gave a blast of the horn.

Q. Where were you then? A. I was on the spar deck; on the starboard side.

Q. Did you hear more than one blast of the horn from the *Cromartyshire?* A. Only one; one blast.

Q. About how soon after you heard this horn of the *Cromartyshire* did the collision occur? A. Oh, some ten seconds, about.

Q. Did you see the *Cromartyshire* before she ran into the *Bourgogne?* A. Yes; when she blew her horn.

1949 Q. You heard no horn from the *Cromartyshire* prior to that one? A. No; that is the only one we heard.

Q. Describe in your own way how the *Cromartyshire* collided with the *Bourgogne?* A. With her bowsprit she carried away the two davits of boat No. 1, and in continuing she demolished the end of the bridge, and her bowsprit cut the whaleboat No. 3 in two, and threw the pieces on board the *Bourgogne,* and then a little further aft she came into us, and cut right into the hull of the *Bourgogne,* and she also smashed lifeboat No. 5.

Q. Did you see the heading of the *Cromartyshire* with reference to the course of the *Bourgogne,* be-
1950 fore the collision? A. She was close hauled on the port tack.

Q. Did you notice her heading with reference to the course of the *Bourgogne?* A. We were heading about easterly and she was crossing our course.

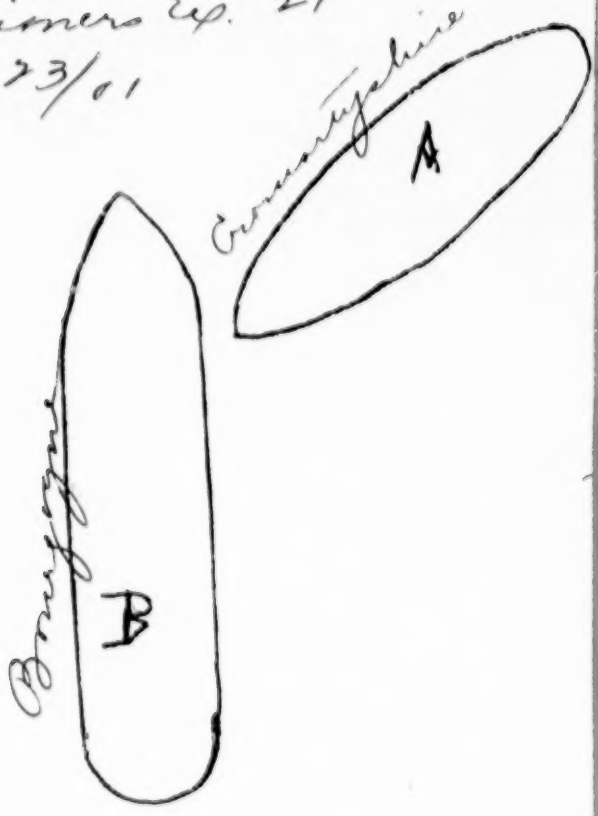
Q. Just take these models, supposing "B" to be the *Bourgogne* and "A" to be the *Cromartyshire,* and place them in the relative positions of the two vessels when you first saw the *Cromartyshire?* A. That is about it.

Witness makes diagram, which is marked Valer Petitioner's Exhibit 21 of this date.

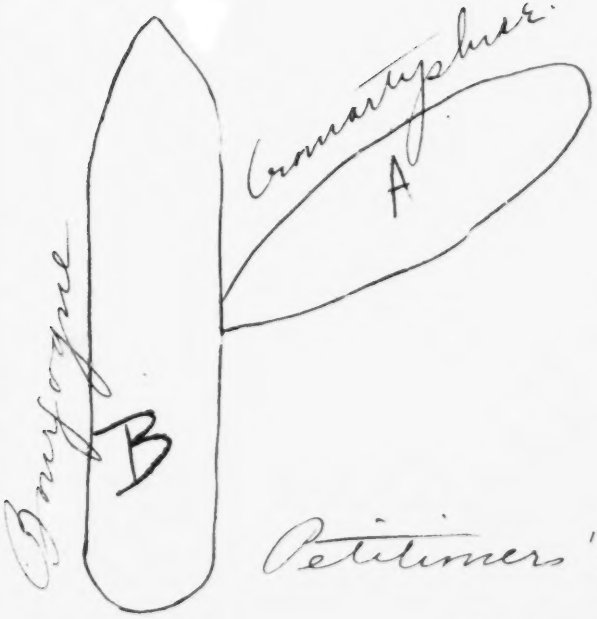
Valer

Peritomers Exp. 21

Oct. 23/01



Valer. Fortune



Petitioners' Exhibit 2

Oct. 23/01

Q. Did you notice whether the *Cromartyshire* changed her heading from the time that you saw her until the collision? A. I did not. 1951

Q. Just take the models and place them so as to show where the *Cromartyshire* struck the *Bourgogne?* A. Before she struck the hull her bowsprit had already carried away the parts of the equipment of the *Bourgogne* that I have already mentioned.

Witness makes diagram, which is marked Valer Petitioner's Exhibit 22 of this date.

Q. About how much of the side of the *Bourgogne*, in length, was penetrated by the *Cromartyshire?* A. I didn't see the tear; I saw that she cut into her. 1952

Q. Do you know the speed of the *Bourgogne* before the collision, while the fog was on? A. I do not; no.

Q. How many boats, if you know, were damaged on the starboard side by the *Cromartyshire?* A. Three.

Q. How many boats were there altogether on that side? A. Six.

Q. Was the damage to those that were injured such as to render them useless? A. Yes; they were broken; they couldn't be got out; they were demolished. 1953

Q. Where were you just at the time of the collision? A. I ran aft at the time that she struck us.

Q. You are not able to state with any particularity the damage that was done by the *Cromartyshire?* A. No; I have told you everything that I saw.

Q. What was done after the collision by you and your fellows to lower the lifeboats? A. We went at once to get out the No. 2 boat on the port side forward, as soon as we commenced our operations

1954 there the ship took a list so that we were unable to get her out.

Q. What ship do you mean? A. The *Bourgogne;* she listed over to starboard right away.

Q. Did you succeed in lowering your boat? A. Yes, with a great deal of trouble.

Q. Did you save any people? A. No; as soon as we unhooked her she capsized.

Q. Then what did you do? A. I climbed up on board the *Bourgogne* by the boat tackle.

Q. Were there any people in the boat, passengers? A. Yes, there were some women among them; there were some fifty-odd people in the boat.

1955 Q. What became of them? A. They were drowned.

Q. How long after the collision did you still see the *Cromartyshire,* if at all? A. I can't say; I went immediately over on to the port side there, and for that matter the fog was so thick that you couldn't see ten meters from the ship.

Q. Did you see her at all after the collision? A. Two or three hours afterwards, when I got on board of her, I saw her.

Q. How did you get on board of her? A. After I got up on the *Bourgogne* I jumped overboard again, and got astraddle of the keel of the capsized

1956 boat; when the *Bourgogne* went down I was right alongside of her, near enough to touch her on the bottom of this boat; I was taken off from this capsized boat by the boat No. 9, which came after us. She put me on board of the *Cromartyshire.*

Q. What other boats on the port side, if any, besides the one that you assisted in lowering, were gotten out? A. The whaleboat No. 2, on the port side there were only two boats got out; the whaleboat and the No. 2 lifeboat, which capsized.

Q. Now as to the starboard side? A. I don't know; I was forward and I can't tell you.

Q. How soon after the collision was the first boat 1957
lowered? A. We might have been five minutes getting her into the water; it was my boat.

Q. What was her number? A. Two.

Q. Do you know the numbers of the other boats on the starboard side that were lowered? A. No. 9 and No. 11.

Q. Do you know whether any boats were lowered on the port side? A. My boat, No. 2, and the whale-boat.

Q. Do I understand you to say that they were on the port side? A. Yes; those two.

Q. What boats, if any, were lowered on the starboard side? A. I have already told you that I was 1958
on the port side forward, and I don't know what was going on on the starboard side.

Q. How long after the collision did the fog continue? A. The ship went down long before the fog left it. I can't tell you how long the fog lasted.

Q. Do you know how long after the collision you got on board the *Cromartyshire?* A. I was seven and a half hours on top of the boat there; towards half past one or two o'clock in the afternoon; we got the boat righted and we were inside of it, but it was full of water.

Q. What, if any, boat drills did you have in Havre before the *Bourgogne* sailed on her voyage 1959
to New York? A. All the boats were tried before the departure.

Q. Just state what was done; state in your own way? A. I have been on board of so many ships since that time that I can hardly recollect; but we do the same things on board of all the ships.

Q. Well, what are they? A. Every one of the boats' crews goes to his post; we get the boats off of their chocks; put them out; they are put into the water; it depends on the ship. We do different things, according to the ship.

1960 Q. Do you remember whether the boats were swung out on their davits and lowered into the water before the *Bourgogne* sailed? A. Yes; that was done on board the *Bourgogne*.

Q. Were all the boats lowered? A. I know that the drill was gone through, but I can't give you the details of it.

Q. Do you remember whether the same drill was gone through in New York before the *Bourgogne* sailed back on her last voyage to Havre. A. The boats were swung out on their davits here in New York; they were not put into the water.

Q. Do you know why they were not lowered into
1961 the water? A. I don't know; I don't know.

Q. Did you have any drills with the lifeboats at sea, on either voyage? A. Yes; every voyage.

Q. You went to Halifax after the loss of the *Bourgogne?* A. Yes; the *Grecian* carried us there.

Q. On what vessel are you now? A. I was on the *Olinde Rodrigues* last; I left the *Olinde Rodrigues* to come here to testify.

Q. Could you estimate the speed of the *Cromartyshire* as she came into view? A. I should think she must have been going five or six knots.

Q. Did you see what sails she had set? A. She had everything set except her main royal.

1962

Cross-examined by Mr. Benedict:

Q. Have you been on the *Bourgogne* before this voyage that she was lost? A. Yes; I had been on board of her four months.

Q. You shipped at Havre, did you not? A. Yes.

Q. Did you ship over again for each voyage at Havre? A. I stayed on board; I didn't go ashore at all.

Q. Did you sign articles? A. We don't sign; we go aboard and that is all there is to it; we don't sign; we simply say whether we want to go or not.

Q. Did you, on this voyage on which she was lost, at that time say that you were ready to do on that voyage? A. Yes; we don't ask; if we don't want to go we go ashore; if we do, we stay; I had already been aboard three months or more. 1963

Q. Which watch was yours? A. The port watch.

Q. Your watch below was between what hours? A. I was below from twelve o'clock till four; I was turned in; at four o'clock I came on watch.

Q. As soon as you came on deck did you go at once to the work of washing the deck? A. Yes.

Q. And continued at that work until the collision, as I understand? A. Yes; until she struck us. 1964

Q. Under whose orders were you doing that, who had charge of the work of washing the decks? A. The boatswain.

Q. What is his name? A. Petiot.

Q. How many men were there engaged in that business of washing decks? A. Six; six or seven or eight, I can't say exactly.

Q. Whereabouts did they begin on that ship, forward or aft? A. Forward; we were moving aft.

Q. Were you on the starboard side all the while, or did you wash the port side first? A. Yes; on the starboard side; we didn't leave that side. 1965

Q. Did you hear any order given by any of the officers on the *Bourgogne* before the horn was heard? A. No.

Q. How many blasts of the horn of the *Cromartyshire* did you hear? A. I only heard one blast.

Q. One blast? A. Yes, one blast; there was only one.

Q. At that time whereabouts on the deck, fore and aft, were you? A. I was on the spar deck

1966 right close to the rail; we were between lifeboats 5 and 7.

Q. So that the *Cromartyshire* struck forward of where you were. Is that so? A. Yes.

Q. Was each man of the crew of the *Bourgogne* assigned to a particular boat? A. Yes.

Q. How many men were assigned to No. 2? A. I can't tell you; I had my post there, and I can't tell you how many we were.

Q. Can you tell how many men went to boat No. 2 after the collision? A. I can't say; I was there and did my duty, but I can't tell how many others were there.

1967 Q. Can you tell the name of any person belonging to the *Bourgogne* there was at that boat at the time? A. I can't recollect; I can't tell you.

Q. Did you, as soon as the vessels separated, go immediately forward to boat No. 2? A. I think we went there before they separated. Just as soon as we saw there was a collision we rushed right away to our boat.

Q. Without any order so to do? A. Yes, we went without any order.

Q. Did you get any order from anybody after the collision? A. No, I didn't have charge of the boat; I didn't receive any orders from anybody.

1968 Q. Did you hear any orders given on board of the *Bourgogne* after the collision? A. No.

Q. Was there any officer of the *Bourgogne* at that boat, at all, after the collision? A. No; an officer didn't have charge of that boat.

Q. How long after the collision do you think the vessel sank? A. I should think from thirty to thirty-five minutes.

Q. During how much of that thirty-five minutes were you busied in getting boat No. 2 out? A. I think we were twenty minutes getting her into the water.

Q. Did the passengers get into the boat before 1969
she was swung out? A. Yes, she was full of them; that is why we couldn't get her out.

Q. Was the vessel in motion while they were trying to get the boat out? Was she going ahead or was she lying still? A. The ship was stopped; she was still in the water.

Q. What made the boat capsize? A. Too many people in her.

Q. How many people do you think there were in her? A. There were at least fifty odd.

Q. Wasn't she a boat that was able to carry fifty? A. No, she was a small lifeboat intended for about thirty people, thirty odd. 1970

Q. Upon the voyage from Havre to New York do you remember that there was any boat drill? A. Yes.

Q. What day? A. It is so long ago I can't recollect the day, but I know the drills were gone through with.

Q. You can't recollect how many days out the vessel had been? A. No, it was three years ago and I can't tell you.

Q. Will you swear that that boat drill was had in your watch? A. Yes; they blew a blast on the horn and we all came up.

Q. Was it all hands then? A. Yes. 1971

Q. Were any of the boats put in the water at that time? A. No, not at sea.

Q. Do you remember how many days the *Bourgogne* was in New York on that voyage. A. I do not.

Q. Do you recollect on which of those days, if any, there was a boat drill, whether the first or the second or the third or what? A. I think it was the Thursday.

Q. What day did she sail? A. Saturday.

Q. Were all the boats put in the water then? A.

1972 No, they weren't put in the water; they were swung out.

Q. Do you remember which side of the *Bourgogne* lay next to the dock? A. It is always the same side; I think it is the port side.

Q. Will you swear that the boats on the port side were swung out while she lay alongside of the dock? A. Yes; the Thursday.

Q. Do you know from your own personal knowledge whether the lookout was changed at four o'clock? A. Yes, it was done at four o'clock when we came on watch.

Q. Do you know how many men there were in
1973 your watch; how many men came on deck at that time? A. I can't tell you exactly; I should have to see the list of the crew.

Q. About how many? A. Oh, some fifteen at least.

Q. How many of them were engaged in washing the decks? A. Seven or eight.

Q. Do you know what the rest of the watch did? A. There was the quartermaster on the bridge.

Q. Do you know the name of that quartermaster? A. The chief quartermaster's named Duval; there was one called Luco and another Moyon and Le-Corre.

1974 Q. How many of these men that you have mentioned went to the bridge? A. All of them.

Q. Do you know what any of the rest of the watch did? A. There were two on lookout.

Q. Do you know the names of either of those? A. Yes; Blouin and Toupin.

Q. Did you see those two men on the lookout? A. Yes, I did; one on the crow's nest and the other on the forecastle.

Q. And they were ordered there immediately when you came on deck? A. One of them was, I

know, and the second was sent as soon as the fog 1975
came on.

Q. Who was the man who was sent there, if either of them, when they first came on deck? A. LeBris.

Q. Did you hear the order given to him? A. Yes.

Q. Who gave the order? A. The boatswain.

Q. Was there any change in any one substituted for that man at any time before the collision? A. At four o'clock LeBris took the lookout and when the first blast of the siren was blown they sent a second man on lookout. At five o'clock LeBris was replaced by Toupin, I think, it was. 1976

Q. Do you mean to say that at four o'clock any man was sent up on the crow's nest? A. Yes, sir; at four o'clock.

Q. Who was that man who was sent in the crow's nest? A. LeBris.

Q. Was there no man sent on lookout on the deck at four o'clock? A. No, there was no fog at four o'clock; there was nobody down there.

Q. Do you mean to say that on the *Bourgogne* in clear weather lookout was kept from the crow's nest? A. Yes.

Q. Did you hear any order given to anybody else besides LeBris to go to the crow's nest? A. Yes. 1977

Q. Who gave that order? A. It was boatswain Petiot.

Q. Who was the men to whom the order was given? A. Blouin. No, he was the man that was sent down on the forecastle; it was Toupin.

Q. What became of LeBris? A. He came down and went to wash the deck with the rest of us.

Q. How long after you came on deck was the change from LeBris to Toupin made? A. At five o'clock.

Q. Before that time had there been any order to

1978 send a man on the forecastle? A. Yes, at about a quarter past four the first blast of our siren.

Q. You have said that there was a change made of the lookout at five o'clock? Was there any change made of the man on the bridge at that time? A. Do you mean the quartermaster?

Q. Yes. A. I don't know; they arranged that matter among themselves.

Q. How much list to starboard did the *Bourgogne* have at the time she went down? A. She was laid way over, because I walked right along on her port side.

Q. Did you notice any of that list before you
1979 went to the forward boat? A. Just as soon as we cast loose the boat No. 2 I saw that the ship had a list because the boat fell right over onto us.

Q. How long was that after the collision? A. Four or five minutes, perhaps.

Q. You began at once, as soon as you got there, to try to get the boat up? A. Yes.

Q. How many men were engaged in that? A. I can't say; I didn't count them. I know there were several there.

Q. And it took, I understand you to say, four or five or six minutes to get the boat swung out? A. No, in getting the boats cast loose there I don't
1980 think we took as long as that; two or three minutes.

Q. Haven't you just said that it did take four or five minutes? A. I mean from the time that we left where I was aft to get forward and get the boats overboard.

Q. How long did it take you to get from where you were aft to the boats? A. I can't say; I calculated that we were four or five minutes by the time we got the boats ready to lower them away.

Q. Were you present in England at the trial of the collision cause there? A. Yes.

Q. Were you examined as a witness? A. The

lawyer talked with us, but we were not questioned 1981
before the Court.

Q. How many others were there besides you? A. A dozen or so, I think.

Q. How many of those dozen are here to be examined? A. I think there was three of us here.

Q. Give us the names? A. LeBris, myself, Fortin, Le Breton and Le Magner and Mr. Laisne. Those were all in England.

Q. Were you examined before Commander Aubert in France? A. Yes.

Q. Were these same men who were in England also examined before Commander Aubert? A. Yes, everybody was called there. 1982

Q. Did you hear any of them testify before Commander Aubert or were you alone when you were interrogated? A. Everybody took his turn. I was questioned alone; I didn't hear the others testify.

Q. Do you know at all what the course of the *Bourgogne* was by compass at the time of the collision? A. I do not.

Q. And of course you don't know the course of the *Cromartyshire?* A. No.

Q. Do you know what was the direction of the wind? A. The wind was westerly, from the westerly direction.

Q. But you can't tell by compass whether it was 1983
southwest or northwest? A. No, I hadn't seen it; I should have had to look at the compass and I hadn't looked at it.

REDIRECT-EXAMINATION BY MR. JONES:

Q. Do you know the name of the man who replaced LeBris in the crow's nest at five o'clock? A. Toupin.

Q. Who had charge of your boat according to the assignment of the men to the lifeboats? A. I think

1984 it was the master-at-arms; I am not sure; Festou, I think.

Q. When the *Bourgogne* was in port did she lie up close to the dock or was she sparred out? A. There was a space between the ship and the dock.

Q. About how much space? A. I can't tell you exactly.

Q. Twenty-five or thirty feet? A. I don't want to say just how much.

Q. There was sufficient space between the *Bourgogne* and the dock to enable you to swing out the boats, was there not? A. Oh, yes, and to put them into the water, too, for that matter.

1985

PIERRE LE BRETON, being duly sworn and examined, through an interpreter, as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. Querité, France.

Q. You are a sailor? A. Yes.

Q. You were on the *Bourgogne* when the collision took place between her and the *Cromartyshire?* A. Yes.

Q. Were you on duty at that time? A. Yes.

Q. When did you go on watch? A. At four
1986 o'clock.

Q. Do you remember the condition of the weather at that time? A. Yes; there was no fog when I went on deck.

Q. Any mist? A. There was a little mist, but you could see a good ways; hardly any at all.

Q. Do you remember how the wind was? A. It came from about aft.

Q. How was the sea, if you remember? A. There was a little swell on.

Q. Where were you stationed? A. I was helping wash decks.

Q. Was there any change in the condition of the 1987
weather after you went on watch before the collision? A. Yes, the fog came in very thick at about half past four or a quarter of five.

Q. What was done on the *Bourgogne* when the fog set in, if anything? A. I kept on washing the deck.

Q. Did the *Bourgogne* sound her fog whistle? A. Yes, every minute the siren was blown.

Q. And you went on washing the deck? A. Yes.

Q. Did you notice whether the lookout was increased after the fog set in? A. Yes, there were two all the time.

Q. Where was the lookout stationed? A. They 1988
were on the forecastle forward.

Q. Was there any man at the masthead in the crow's nest? A. Yes, there is always a man in the crow's nest and there were two on the forecastle; Blouin and Toupin were on the forecastle.

Q. What first attracted your attention to the *Cromartyshire?* A. I heard a blast of the horn.

Q. From which direction did that blast seem to come? A. From the starboard side forward.

The Interpreter: I can't translate the gesture that he has made.

Q. At that time did you see the *Cromartyshire?* 1989
A. Then we saw her right away, at once.

Q. How soon did the collision take place after you heard the horn? A. Right away.

Q. Did you see whether the *Cromartyshire* was under sail? A. She had everything set except her main royal.

Q. Did she seem to be making much headway? A. She was going ahead; she was going between five and six knots.

Q. Which part of the *Cromartyshire* struck the *Bourgogne* first? A. Her bowsprit.

1990 Q. What part of the *Bourgogne* did the bowsprit strike? A. The bridge.

Q. Any of the boats? A. Yes.

Q. Did the hull of the *Cromartyshire* penetrate the *Bourgogne?* A. Yes, it was with her anchor that she tore the plates of the *Bourgogne.*

Q. About what distance was this damage fore and aft? A. One meter, about a yard.

Q. Were there any other fractures in the hull of the *Bourgogne* than that one done by the anchor? A. I saw a hole there, that is all I saw. I only saw this hole there.

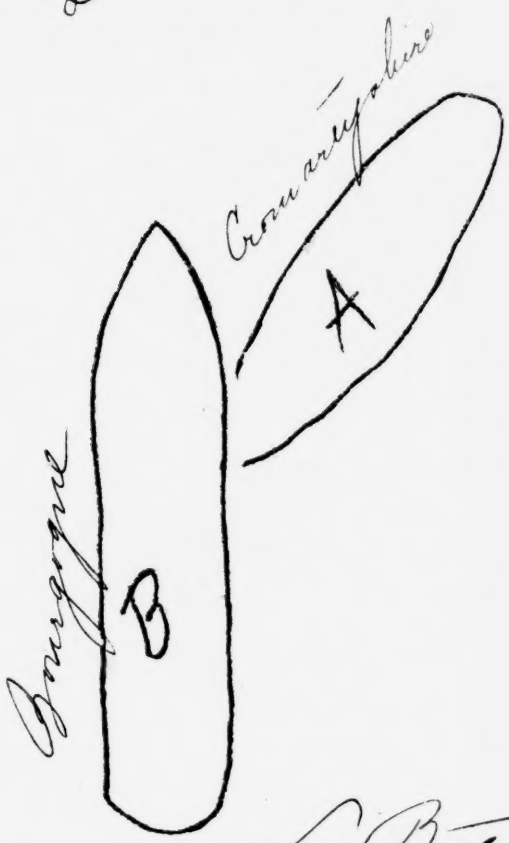
Q. How many of the lifeboats were injured by
1991 the collision? A. I saw four.

Q. Take these two models; supposing "B" to be the *Bourgogne* and "A" to be the *Cromartyshire;* indicate how the vessels came together?

Witness makes diagram "Le Breton Petitioner's Exhibit 23" of this date.

1992

Le Breton



Le Breton

Exhibit 23

Oct 23/01

Q. What was the number of the lifeboat to which 1993
you were attached? A. No. 10.

Q. Who, according to the assignment to the lifeboats, was in charge of that boat? A. Petiot, the boatswain.

Q. Did you see the water rushing into the side of the *Bourgogne?* A. Yes; a few moments before she went down I threw myself overboard.

Q. What did you do after the collision? A. I went to the whaleboat No. 4 on the port side.

Q. Go and tell what you did? A. We cast her loose and pushed her out, turned her out, swung her out; we got her partially down and at that moment I left her and went to lifeboat No. 2. We 1994
cast her loose and upset the chocks, and we got her swung out and we lowered her down some, too, and from there I went to boat No. 10. We got boat No. 10 cast loose. We tried to get her out, but it was impossible, because the boat had too much of a list. I remained there a little while. I stood there at the foot of the davits to take care of the tackle. I go into boat No. 10 and stayed there at the tackle up to the last moment.

Q. Did you succeed in getting any of the boats that you have mentioned into the water? A. Yes, No. 2 and the whaleboat were got into the water.

Q. Why were not the others lowered? A. It 1995
was impossible because the ship had too much list; it was impossible.

Q. Did you observe whether any boats were lowered on the starboard side? A. I didn't notice what was taking place on the starboard side.

Q. Did you observe whether the passengers crowded into the lifeboats? A. Yes; even before we could get them off of their tackles.

Q. How did you save yourself? A. On a raft.

Q. Did you jump overboard? A. I was on the port side, but I went over to the starboard side,

1996 over the skylight to the engine room, and jumped overboard.

Q. Did you hear any orders from the captain after the collision? A. No.

Q. Do you know what the speed of the *Bourgogne* was at the time of the collision? A. I do not; I was washing down decks and I didn't occupy myself with that.

Q. State what boat drill, if any, you and your company went through at Havre before the *Bourgogne* sailed on her last voyage? A. Every one of the crew went to his position at his boat; the boats were then got out and lowered into the water; they
1997 were hoisted in again and put back where they belonged on their chocks.

Q. State whether any such drill as that took place in New York before she sailed back to Havre on the last voyage? A. Yes; the same exercises were gone through with, except that the boats were not lowered away into the water; they were put out and tried; lowered away a little; but not into the water.

Q. What boat drill or practice, if any, did you go through with on the voyage from Havre over? A. That depends on the weather; when it is bad weather we don't do anything; but the men go to
1998 their boat stations.

Q. How often did that occur on that voyage, if you remember? A. Once on the trip; two or three boats are put through the exercises one day, and two or three another day.

Q. Do you remember the days that these exercises were gone through with? A. I can't tell you what day it was in Havre; I think it was Tuesday that it was gone through with here in New York, but I am not sure about that; it depends on the weather when we are at sea.

Q. Then I understand you can't remember what

days these exercises took place on the voyage over? 1999
A. No; I know they were gone through with in New York and in Havre, but I can't tell you the exact days.

Q. I am asking now in regard to the days that these exercises were gone through with on the voyage over; do you remember those days? A. I can't tell you; I don't remember.

Q. How did you finally get on board the *Cromartyshire?* A. We had two oars on board the raft and we rowed to the *Cromartyshire.* Mr. Laisne was with us on the raft.

Q. Do you remember what time of day it was that you got to the *Cromartyshire?* A. No, I can't 2000
tell you that.

Q. What became of the *Cromartyshire* right after the collision? A. Right away after the collision her foremast fell on board of us.

Q. Did you still continue to observe her or did you lose sight of her? A. I didn't stay there looking at her.

Q. Did she continue to be in sight up to the time that the *Bourgogne* sunk? A. We didn't see her again until the fog lifted.

CROSS-EXAMINATION BY MR. BENEDICT:

Q. Was this your first voyage on the *Bourgogne?* 2001
A. No, it was the fourth.

Q. What were your wages? A. At first I got sixty-five francs a month, afterwards 70 francs.

Q. What watch were you attached to? A. The port watch.

Q. How many were there in that watch? A. Sixteen or seventeen; I can't tell you exactly.

Q. When you came out at four o'clock did you go at once to washing the deck? A. Yes.

Q. Whereabouts did you begin? A. On the spar deck?

2002 Q. Whereabouts? A. Under the bridge on the spar deck.

Q. On which side of the vessel? A. The starboard side.

Q. From there did you wash aft? A. Yes.

Q. How many men were engaged in that washing of the deck on the starboard side? A. I can't say, perhaps eight or nine.

Q. Were you forward of the bridge at any time? A. No.

Q. How far aft were you at the time of the collision? A. We were about opposite the forward chimney, the forward funnel; we were about be-
2003 tween the bridge and the forward funnel.

Q. How far aft of the bridge is the forward funnel about? A. I don't know exactly, somewhere around thirteen or fourteen meters, I should think.

Q. Do you say that it took you from four o'clock till after five to wash that thirteen or fourteen meters with seven or eight men? A. Yes, because were were holystoning the deck right along.

Q. Did you look forward at any time after you came on deck to see who was on lookout? A. Yes.

Q. Whom did you see? A. I saw Toupin there alone.

Q. He was there alone; did you ever look after
2004 you came out? A. No, you can't look all the time to see who is down there; you can't stand there looking.

Q. So that Toupin is the only man that you saw on the lookout? A. At that time.

Q. At any time? A. After when there was fog the lookout was doubled.

Mr. Benedict moves to strike out the last clause of the answer as not responsive.

Q. Did you see any other one on the lookout except Toupin after four o'clock? A. There was no

fog at that time and Toupin was there, the only one. 2005
I saw Blouin leave to go there, but from where I was washing I couldn't see him there.

Q. How do you know where Blouin was going? A. Because he was working with us washing the decks, and he was told to go on the lookout.

Q. Who told him? A. The boatswain Petiot.

Q. When you went to washing the deck first do you remember whether Le Bris was there with you? A. He was washing, but I can't tell whether he was there at that moment. He is a topman. He isn't all the time working with the others.

Q. When you first saw the *Cromartyshire*, how far away do you think she was? A. She wasn't 2006
very far; we would have had time to jump over the rail.

Q. What were the numbers of the boats on the starboard side? A. I don't know how to read; I don't know what the numbers were.

Q. Do you know what the numbers were of the boats on the port side? A. I don't know very well; I know my boat No. 10 and the whaleboat No. 4; I don't know what the numbers of the others were.

Q. Were you assigned to No. 10? A. Yes.

Q. Whereabouts on the ship was No. 10? A. Right opposite the skylight to the engine room.

Q. Is that forward of where you were washing 2007
at the time of the collision? A. It is aft on the other side of the ship.

Q. Where was the whaleboat No. 4? A. Just aft of the bridge.

Q. Was that forward of where you were working? A. About opposite where we were working, but a little forward.

Q. Did you get any orders as to what boat to go to? A. The boatswain told us to go to the whaleboat.

2008 Q. How many went to the whaleboat? A. All of us that were working there.

Q. Did the boatswain go, too? A. Yes.

Q. What did you do at the whaleboat? A. We got her lowered away a little.

Q. Was there anybody there at that time except the men who had been washing who you say went over there? A. No, there was only one there.

Q. You said that you left there and went to No. 2; did you get any order to leave there and go to No. 2? A. Yes, the boatswain told us to go right to No. 2.

Q. Who went to No. 2 besides yourself? A. Four
2009 or five of us.

Q. Did the boatswain go? A. Yes.

Q. When you got to No. 2 was there anybody there? A. No, only us.

Q. Who remained taking charge of the whaleboat? A. I don't know.

Q. When you got to No. 2 had anybody attempted to get it out? A. No.

Q. How long did it take you to get out the whaleboat? A. I can't tell you exactly.

Q. About. Before you went to No. 2? A. Seven or eight minutes perhaps; I can't say exactly.

Q. When you got to No. 2 how many men worked
2010 at her? A. Five or six. There were others that came after.

Q. What was done with No. 2? A. We got her off from her chocks and swung her out and lowered her away a little. From there I went to my boat No. 10.

Q. Did you get any order to go to No. 10? A. Yes, we did.

Q. Who from? A. The boatswain.

Q. Did he also go to No. 10? A. Yes.

Q. How many others with him? A. There might have been fifteen seamen there.

Q. When you got to No. 10 had anything been done to get that boat out? A. No, we were the ones that got her out. 2011

Q. What was done toward getting her out? A. We got her off from her chocks, but it was impossible to get her out; we couldn't swing her out; it was impossible to swing her out.

Q. How many men were there that tried to swing her out? A. At the end of it there were a whole lot of passengers helping. I think there were at least fifty people trying to get her out.

Q. Did you get any orders after the collision from anybody except Petiot, the boatswain? A. No, he is the only one who gave me any orders. 2012

Q. You say that you left No. 10; did you get any orders to leave her? A. It was the boatswain who told us to go and help at other boats.

Q. Did you go to help out any other boat after No. 10? A. Yes.

Q. What boat did you go to after No. 10? A. I don't know; I can't read; I can't tell you which one it was.

Q. Was it a boat on the port side or on the starboard side? A. On the port side.

Q. Was it forward or aft of No. 10? A. I think it was between the two funnels.

Q. When you got to that boat had there been anything done towards getting that boat out? A. Yes, there were other people there trying to get her on. 2013

Q. What was done after you got there? A. She had been got out from her chocks and it was impossible to get her out.

Q. What did you do? A. She was off from her chocks when we got there already.

Q. That doesn't tell what you did; what did you do? A. I lent a hand to push on her.

2014 Q. How long did you work at that boat? A. I don't know; I can't say.

Q. Did you get any orders to leave that boat and go anywhere else? A. I went to my boat from there.

Q. No. 10? A. Yes.

Q. What did you do there? A. I got into her and stayed there.

Q. How long did you stay there? A. I didn't stay there very long, for I had to jump overboard right away.

Q. But you said you jumped overboard on the starboard side? A. I got out of her and went over
2015 to the engine skylight and jumped overboard.

Q. Did you see any rafts go overboard at any time? A. No, I didn't see any boat overboard.

Q. Did you go on to a raft yourself? A. Yes, the one that Mr. Laisné was on.

Q. Was there any order given to everybody to save themselves? A. I don't know; I didn't hear any.

Q. Did I understand you to say that the foremast of the *Cromartyshire* fell on the *Bourgogne?* A. No, it fell alongside.

Q. Did it fall alongside while the vessels were together? A. The two ships had already sep-
2016 arated.

Q. You have said that four boats were destroyed; which boats were they? A. There was a whaleboat at the time she struck the bridge and—there were four boats all together that were destroyed; I don't know which ones they were.

Q. Did you see anybody get into a boat and get the boat into the water? A. No.

Q. Do you know that there were any steerage passengers who were Austrians who were saved? A. I think there were eleven or twelve.

Q. Do you know how they were saved? A. I do 2017
not.

Q. While you were on the raft with Mr. Laisné did you hear him say anything about shooting anybody? A. No.

Q. Did you hear Laisné speak of shooting persons in a boat near by with a revolver because they wouldn't let him get near their boat? A. No, he was on the raft a good while before I was and I didn't hear that.

Adjourned to Friday, October 25, 1901.

2018

NEW YORK, October 25, 1901.

Met pursuant to adjournment; counsel being present as heretofore stated.

JULIEN PIRONNEC, being duly sworn and examined as a witness for the petitioner, testifies, through an interpreter:

By Mr. Jones:

Q. Where do you live? A. Noyal, Muzzillac, in the Morbihan.

Q. Were you one of the crew of the *Bourgogne* 2019
when she foundered? A. Yes.

Q. What position did you hold? A. I was the electrician for the bunkers; the bunker electrician; that is the title when they put us on the crew list; I assisted with all the electric lighting of the ship; I was assistant electrician.

Q. Were you awake at the time of the collision with the *Cromartyshire*? A. No; I was sleeping; I was not on watch.

Q. Were you waked by the collision? A. Yes; by the shock of the collision.

2020 Q. Where is your state room located? A. It was in the firemen's room, on the starboard side.

Q. Did the *Cromartyshire* penetrate your room? A. No; I don't think the hull of the *Cromartyshire* penetrated, but I think her anchor tore out the side of that part of the ship.

Q. Your stateroom was damaged by the collision? A. Yes.

Q. What did you do after the collision? A. I went right up on deck at once after the collision took place.

Q. Then what did you do? A. I almost immediately went back again into the firemen's room, the
2021 sleeping quarters, because I had nothing on but a shirt; and right alongside of my bunk there were two men who were sleeping; there was a boy and a fireman; I woke them up; and at that moment the room was filled with water; the water penetrated down into the engine room through the door of our quarters.

Q. Then what did you do? A. I went up on deck again. There was a very thick fog at that time. I went over on the port side of the ship.

Q. Upon the order of any one? A. No; without any order.

Q. Did you afterwards get any order in regard to
2022 going to any of the lifeboats? A. Yes; we got orders that those men who were not of the watch should go to their boat stations.

Q. Who gave that order? A. I don't know. I heard my comrades saying that those were the orders, and I didn't hear any officers give them. I followed the others.

Q. Where did you go? A. To boat No. 6; that was my boat station at that time. There were about ten of us there under the orders of Lieut. Rempler. We got boat No. 6 off from her chocks and cast her loose and got her ready to put into the

water. We then tried to swing her out, but on ac- 2023
count of the list of the ship we were unable to succeed. We were about thirty odd there, sailors and passengers together, and working at that boat; but we were unable to succeed. We then went to boat No. 8 and got her off from her chocks, but I didn't stay there. Sailors continued working on the boat No. 8, and I came back forward. I went through the passage to the first-class cabins and went over on the starboard side. When I got over on the starboard side, Mr. Pichard, the first lieutenant, told me to go and help get out boat No. 7. We got the boat into the water. Seeing that it was too full of people, I went up on to the port side of the 2024
ship. At that time there was a life raft at the port side, right opposite the skylight to the engine room. This raft had been cast loose, and by the movements of the ship it had rolled overboard. As soon as this raft went overboard I jumped overboard. At that time there were several persons on it and they pushed off from the ship, so that I was left for about twenty minutes swimming in the water. At the end of that time I managed to get up on this raft, and the *Bourgogne* had already gone down. We were twenty-seven or twenty-eight people on this raft—I think it was twenty-seven. There were several passengers on the raft, and Mr. and Mrs. Lacasse 2025
and some second-class passengers. There was one oar happened to be under the raft, and we picked up another oar in the water, and with those two oars the raft was rowed, and about two hours after we saw the *Cromartyshire*. About eight o'clock the fog commenced to disappear under the influence of the sun; and then we saw the *Cromartyshire* and went towards her. When we got about one hundred and fifty meters from her, one of the *Bourgogne's* whaleboats came to us from the *Cromartyshire* and took us in tow. But before we were

2026 taken in tow we met another raft on which there was one man alone; and several of the people on our raft got on to the other side to lighten our raft. Up to that time the *Cromartyshire* hadn't got out any of her boats to come to our assistance. Her boats were all on board, bottom side up, and lashed, the same as they had been. We finally got on board the *Cromartyshire*. About three o'clock in the afternoon the sailors of the *Cromartyshire* finally concluded to go and see if they could find anybody or anything; but up to three o'clock in the afternoon they had done nothing whatever to save anybody.

2027 Q. On which side of the *Bourgogne* was boat No. 6? A. The port side.

Q. On which side was boat No. 8? A. Also on the port side.

Q. On which side was boat No. 7? A. The starboard side. The even numbers were on the port side, and the odd numbers were on the starboard side.

Q. What position did I understand you to say Mr. Rempler, who told you to go to boat No. 7, occupied? A. Mr. Rempler was the lieutenant; Mr. Pichard was first lieutenant, and Mr. Rempler was lieutenant; I don't know whether he was second or third.

2028 Q. Did you get any order from Mr. Rempler? A. No; I didn't get any from him; but I went to boat No. 6 and Mr. Rempler was there, and we worked under his orders.

Q. I understood you to say you went to boat No. 7 on Mr. Pichard's orders? A. Yes; Mr. Pichard gave orders to lend a hand to get that boat out, and naturally I didn't refuse.

Q. Did you see the men at work on any of the boats on the port side, besides boats Nos. 6 and 7? A. Yes; there were men working at boat No. 10 and 12 also.

Q. Did the men succeed in lowering any of the 2029
boats on the port side? A. The whaleboat was put into the water. I know there were two boats on the port side got into the water. We got the whaleboat into the water and the other boat capsized; I didn't see that, but I heard so.

Q. How many boats, if you know, were lowered on the starboard side? A. 7, 10, No. 9, 11, and the other three were demolished by the collision.

Q. Was any boat on the starboard side damaged by the falling of one of the funnels of the *Bourgogne?* A. I don't know; I didn't see the funnel fall.

Q. Did you afterwards see that the funnel had 2030
fallen? A. No; I didn't pay any attention to it.

Q. It was testified yesterday by one of the witnesses for the respondents in this case that a rope on the raft which was being held by several women was cut and the women were thereby drowned? Did you see anything of that? A. No.

Q. The name of this witnes is Liebré? A. I don't know him; I don't remember seeing him.

Q. How many rafts all together were on the *Bourgogne?* A. Four.

Q. You have mentioned the raft on which you were floated and another raft upon which there was a single person. Did you see any of the other 2031
rafts in the water? A. Two other rafts had got alongside the *Cromartyshire* before we did. We took the last raft that was on board on the port side near the skylight to the engine.

Q. Was Mr. Laisné on the raft with you? A. No.

Q. Was the *Bourgogne* still going ahead or in motion in any way when you jumped overboard and got on the raft? A. No; the ship was stopped still in the water and was almost capsized; the spar deck rail was touching the water.

Q. How long had she been stopped before she sank? A. I don't know.

2032 Q. Did you notice that she was stopped when you went on deck? A. Yes; she was stopped when I went on deck; she wasn't moving; she stopped immediately after the collision.

Q. How did the *Bourgogne* sink; by her head or stern? A. By the stern.

Q. Did you have any one with you while you were trying to reach the raft after jumping overboard? A. We were several in the water, but I was swimming on my own account. Quite a lot of people threw themselves overboard at the same time.

Q. Do you remember seeing one of the appren-
2033 tices in the water with you? A. I know that when I got up on the raft I reached out an oar to an apprentice who was in the water. His name was Bedfer.

Q. What became of him? A. He was saved then and went to Havre; but he got drowned since that time.

Q. Did you see the captain after you came on deck? A. No, I didn't see him. At the last moment I saw the commander on the bridge; he was on the port side of the wheel.

Q. By the last moment you mean as the *Bour-
gogne* went down? A. No; while I was still on
2034 board of the ship; about five minutes before she went down. The raft on which I was saved was got over into the water about five or six minutes before the ship went down. When I got up on to the raft the *Bourgogne* had already disappeared.

Q. Do you know what became of Mr. Pichard, the first lieutenant? A. He is dead; he was drowned with the *Bourgogne*.

Q. Do you know what became of Mr. Rempler? A. He is also dead.

Q. Was he drowned in the collision? A. Yes; he was a victim of the collision.

CROSS-EXAMINED BY MR. BENEDICT: 2035

Q. Were you a witness on the trial in the English court? A. No.

Q. Did you go there to be a witness? A. No.

Q. Were you examined in Havre before Commander Aubert? A. Yes.

Q. Were you examined anywhere else or by any other person than Commander Aubert? A. No.

Q. Have you seen the testimony that you gave before Commander Aubert since it was given, or have you read it or heard it read to you? A. No; I have not.

Q. Have you talked over the matters of the collision with the counsel here present before your 2036
present examination? A. No; I have talked with nobody. I was questioned in Havre and I am being questioned now.

Q. You have had no means of refreshing your recollection as to what you said in Havre? A. No; I am only telling what I saw, and my memory is still sufficiently clear to do that.

Q. Your berth was on which side? A. On the starboard side in the firemen's quarters.

Q. Where was that room with reference to the engine-room? A. Right alongside of it; right close to it; contiguous to it.

Q. Did the door of your quarters open into the 2037
engine-room? A. Yes; it gave entrance right into the engine-room.

Q. Was the engine-room all on one floor or did it have separate stages? A. There was a floor and then several gratings, three gratings, one above the other; and then there was also a grating between two of the cylinders; and then there was another one above that, in order to oil the parts of the engine.

Q. Did those gratings run all around the engine-room or were they only on the engine itself? A.

2038 Yes; they went all around; but of course there were openings for the stores.

Q. About how large was that engine-roo ? A. You are asking too much.

Q. About? A. I don't know.

Q. Where, with reference to the engine-room, were the fire-rooms? A. Forward of the engine-room.

Q. Were they divided from the engine-room by compartments? A. Yes; there is a watertight bulkhead between them.

Q. Was the fireroom divided into different rooms by compartments? A. Yes; and each division was
2039 a watertight bulkhead.

Q. How many boilers were there in the different compartments? A. Four in each.

Q. That would make eight boilers? A. Twelve.

Q. How many boilers in each compartment? A. There were three furnaces in each; each boiler had three furnaces.

Q. Now I ask you again how many boilers were in each compartment? If there were twelve boilers, how many boilers were there in each compartment? A. Four.

Q. But there were two compartments? A. No, there were more; because there were twelve boilers;
2040 I don't know the plan of the ship.

Q. Hadn't you often been in the fire-rooms? A. I was in there once in a while to repair the electric lights when the lights went out; but I didn't occupy myself with the construction of the ship.

Q. Were these compartments side by side or fore and aft of each other? A. They run the length of the ship; the boilers were in a compartment in the middle of the ship, and on each side of the ship there were side bunkers.

Q. Whereabouts were your duties as electrician? A. In the engine room there were three electrical

machines. We were three assistant electricians 2041
there; we were in three watches; from 6 to 10, 10 to 2 and from 2 till 4; and then the first began over again.

Q. Where with reference to the engine room were these three electrical machines? A. They were forward of the engine on the port side; on the forward part of the engine; they were placed in the length of the ship.

Q. That would be nearest the firerooms, would it not? A. No; opposite the engine.

Q. Then they wouldn't be forward of the machines, would they? You say the firerooms are forward of the machines? A. The engines are in the 2042
middle of the ship; the electric machines are on the port side.

Q. All three on the same side? A. Yes; one behind the other, in the sense of the length of the ship.

Q. How did they reach those three different machines? By a passage on the side of the engine-room or between them and the engine? A. They were on a flooring a little mite higher up, perhaps a meter higher than the floor of the engine-room; about the height of this table.

Q. When the engineers worked the engine, whereabouts did they stand? A. I don't know; I didn't 2043
pay attention to that. The chief engineer was at the starting bar and the third engineer was in the fire-room; he has charge of that. I don't know where the stations of the two others were.

Q. When the engineer stands at the starting bar, does he stand on the floor of the fire-room or on one of the galleries? A. Down on the floor of the engine-room he stands.

Q. Is it usual to have anybody else at the starting bar excepting the engineer in charge? A. I don't know exactly; I know always when we go out of

2044 port the chief engineer is at the starting bar; that is his place; I have seen no other person at the place. Once or twice I saw the chief of the watch take the starting bar. I remember one time a man fell overboard and the chief of the watch took hold of the starting bar. I saw it happen twice, I think.

Q. That is instead of the chief? Only one at one time? A. Yes; one man manœuvered the engine; didn't require more than one.

Q. Do you know where the gauges on the boilers were on the engine? A. About half way up the boiler; that is to say, about the height of a man—1 metre 80 centimetres, about. There were two
2045 boilers; one alongside of the other; and the gauges were together, right alongside of each other, between the boilers.

Q. Those gauges are in the fire-room as I understand? A. Yes. There are also two gauges in the engine-room to indicate the pressure in the boilers.

Q. Where are those gauges in the engine-room? A. On the front of the engine, on a big plate; there are other gauges also there which show the vacuum and so on.

Q. Do those other gauges show the condition of things in the boiler or in the cylinders? A. There is one that shows the interior pressure in the cylin-
2046 ders and various other details.

Q. Are all these gauges on this same plate? A. Yes.

Q. How large is the plate? A. I don't recollect. I don't even recollect how many gauges there were on it.

Q. Do you know whether there was a clock in the engine-room? A. Yes; there was one.

Q. Whereabouts was that? A. As much as I recollect, I think it was on one of the columns of the engine.

Q. Where was that? What one of the columns

or on the lower part of the engine? A. On the 2047
lower part.

Q. Was there a blackboard in the engine-room on which to note orders that were received? A. Yes.

Q. Where was that blackboard placed? A. Right opposite the electric machines.

Q. That is, towards the stern? A. Yes. There was a railing right opposite the electric machines and this blackboard was attached to that; about a metre square.

Q. When anybody wrote on that blackboard which way did he face; forward or aft or to the side? A. He had his back turned to the starboard side of the ship. The blackboard could not be very 2048
well fixed on the engine, because water would be dropping from it, and it would rub out.

Q. It would be between the electrical machine and the great engine? A. Yes; on the railing.

Q. This clock that you speak of, how big was it about? A. It might have been from 25 to 30 centimetres in diameter.

Q. Was there any clock in the fireroom? A. I don't recollect.

Q. Was the room that you slept in below the surface of the water? A. Below the surface of the water; that is to say, the water came up about the height of the ports; because in rough weather we 2049
had to close the ports to keep the water from coming in. The floor of the firemen's quarters was about a metre and 8/10 below the water line.

Q. How long fore and aft was that room in which you were? A. It might have been 20 metres; 20 to 25.

Q. Whereabouts in that room was the bed in which you were sleeping? Was it on the outside or inside or where? A. It was on the after end, in the middle of the ship; altogether in the after end.

Q. Was it parallel with the keel of the ship, or

2050 the other way? A. My berth ran in the direction of the length of the ship.

Q. Was there anybody in that room with you before the collision but this boy and the fireman? A. All the men of the first and second watch were there; at the time of the collision everybody went up on deck except those two.

Q. What were the names of those two, the fireman and the boy? A. The engine-room boy is named Bedfer; and I don't recollect the name of the fireman.

Q. Was the fireman saved or lost? A. I don't recollect whether the fireman was saved or not. The
2051 boy was saved, because that was the one that I helped get up on the raft.

Q. Where were the beds of the boy and fireman with reference to your bed? A. They were right alongside of mine; there were two berths, one over the other; the boy's was right alongside of mine, and the man's was next to his.

Q. When you were started up by the collision, did you see any injury to the room that you were in? A. No; I didn't see anything broken; the water was coming in; I don't think there was anything broken.

Q. Do you mean to say that the water was coming in when you first waked up? A. As soon as
2052 we went up on deck there was already water in our quarters.

Q. Do you mean to say that when you waked up there was water coming into that room? A. Yes; while I was getting out of my berth the water was coming in; it came in constantly.

Q. Where did it come from with reference to your boat? A. In the forward part of the quarters, I was altogether in the after end, near the storeroom of the engine-room; and the water was coming in in the forward part; but the watertight door

had already been shut there; the engineer Audran 2050
had just closed the watertight bulkhead there.

Q. What was that watertight bulkhead between? A. It must have been between the firemen's quarters and the quarters of the deck passengers. It was a small store-room where we put in oil and tools for firing the engine.

Q. Were Audran's quarters in the same room? A. No; he slept in the first firemen's quarters.

Q. Where were the first firemen's quarters? A. On the port side, flush with the deck.

Q. Do you mean to say that when you first got up you saw that Audran had already closed those watertight doors? A. Yes; he was closing it then. 2052
He had a top maul in his hand and he was wedging the door.

Q. So that you didn't get up after the collision until Audran had had time enough to come from his quarters on the other side of the ship and take this maul to close these doors? A. He was right alongside of our quarters.

Q. Haven't you said that his quarters were on the port side of the ship? A. It was about a second. You had only got to come down. In case of accident his post is at that storeroom there, to get out the tools, etc. There was another man with him also; a storekeeper named Piveau, who was on 2055
watch at that time.

Q. What has become of him? A. He is dead; he was drowned at that time.

Q. And Audran also? A. No.

Q. He is still living? A. Yes.

Q. Have you seen him lately? A. No, I haven't, but I know that he is alive.

Q. Where is he? A. I don't know.

Q. Where did you see him last? A. I saw him after the collision; we met on the *Cromartyshire;* we were together as far as Havre; I haven't seen him since.

2056 Q. Have you heard that he is still living? A. Yes.

Q. Do you know where his home is? A. The last I knew he was living in Havre, at the time of the collision in 1898.

Q. When you went up on deck first where did you go? A. I went up on deck on the starboard side; the stairs conducting down into the firemen's quarters had its access right out on deck.

Q. How long did you stay out on deck at that time? A. O few minutes; then I went back down—I had nothing on but a shirt and I went down to get some more clothes, to get a pair of trousers.

2057 Q. How long did you stay before you came up on deck again? A. About perhaps three or four minutes; I can't remember precisely. At such a time as that you can't say whether it was more or less. Between the berths there there is only a small space, and we might have been 90 people in there, and I had to wait to get out until others got out. Perhaps there were 100 people in there, and it takes a little while to go out.

Q. Was there only one stairway there? A. It is an iron ladder, not very wide; perhaps 60 centimetres wide.

Q. So that only one person can go up at one time? A. Yes.

2058 Q. When you went on deck the second time, where did you go? A. I went on the port side; and I then noticed that the vessel was listing over a great deal; there was a very thick fog.

Q. Wasn't the vessel going ahead then? A. No; the ship was stopped.

Q. Wasn't the engine put in motion again after the collision? A. I don't recollect; at that moment the ship was stopped.

Q. Do you mean to say that while you were working at all these different boats that you have

mentioned you couldn't tell whether the vessel was 2059
going ahead or not? A. No; I couldn't say.

Q. When you were on the port side did you receive any orders from anybody, when you first went to the port side? A. I did not receive any orders. I saw my comrades who were going on the spar deck to the boats, and I followed the movement.

Q. Were you assigned to any particular boat generally? A. Yes; boat No. 6.

Q. When you got to the boat No. 6 did you see how many sailors there were there? A. About twelve people that belonged to the crew.

Q. Was there any officer there? A. Yes; Lieut. Rempler; we worked under his orders. We imme- 2060
diately capsized the chocks and got the boat ready to put out. That manœuvre lasted hardly five minutes.

Q. Did you do anything excepting getting the boat ready to get out, or did you put her out? A. We couldn't; there were a number of persons that tried to help us get the boat out. I think there were at least 30 people there pushing on the boat.

Q. Did anybody get into the boat? A. No; at that time there was nobody in the boat; it was empty.

Q. After you left boat No. 6 did you go back there again at any time? A. No; Mr. Rempler told 2061
us to go to No. 8, and No. 8 had already been got off from her chocks, and we just lent a hand; I didn't stay there even.

Q. What was done with No. 8? A. The men who were assigned to that boat were working there.

Q. What were they doing? A. They were trying to get the boat overboard; but couldn't succeed.

Q. Wasn't that boat got overboard either? A. No.

Q. Were you ordered to go from that boat anywhere else? A. No; I saw that there was nothing

2062 that I could do there, and I left there, trying to look out for myself.

Q. How long did you stay at No. 6 before you went to No. 8? A. I don't know; I don't recollect.

Q. How long did you stay at No. 8 before you left there? A. Just the time to go to No. 8 and see that she couldn't be got into the water, and then I walked over to the starboard side.

Q. Was there anybody in No. 8? A. Yes; the second class passengers: women and children.

Q. Was it full? A. Yes; and in almost all the port boats there were people, which rendered the manœuvering very difficult. When we got No. 6 off
2063 from her chocks there was nobody in the boat.

Q. You said there was nobody in the boat when you left No. 6? A. No.

Q. Was No. 6 forward or aft of No. 8? A. Forward of No. 8; opposite the forward funnel.

Q. Then when you went over to the starboard side did you get any orders on the starboard side? A. Yes; from Mr. Pichard, the first lieutenant, who told me to help get No. 7 into the water.

Q. Did you go to No. 7? A. Yes; I went through the passageway for the first class people; through the smoking room passage, over on to the starboard side.

2064 Q. Was Pichard on the port side? A. No; he was on the starboard side; he gave me the orders after I got on the starboard side.

Q. When you got to No. 7 had that boat been got out over the side of the ship at all? A. Yes; they were pushing it out at that moment.

Q. So you didn't do anything to help get No. 7 into the water? A. Yes; I hauled on the tackles to hoist it up, to get it over the rail. There were already people in it then, men, women and children in it; and a little of everything in it. Seeing it

was too full—it was already loaded sufficiently, I 2065
didn't get in.

Q. How long did you work at No. 7? A. I don't recollect; not very long; perhaps five minutes.

Q. How long do you say it was from the time of the collision till the *Bourgogne* sank? A. Thirty-five or 40 minutes.

Q. After you left No. 7 where did you go? A. I went to the port side of the ship, opposite the engine-room skylight, on the after end of the spar deck; there was a passage for the first class passengers; I went through that passage on the port side.

Q. When you got on the port side what did you do then? A. I noticed a raft that was opposite the 2066
skylight to the engineroom.

Q. Had anything been done to get that raft loose? A. Yes; it was already cast loose.

Q. Were there any other rafts there, or was that the only one? A. That was the only one that was there.

Q. Was there anybody else there about the raft? A. Yes; we were several.

Q. When you got there were there other persons there before you? A. Yes; there were people waiting there; I was the last one to come.

Q. But they were doing nothing to get the raft overboard? A. They were waiting there for the 2067
raft to fall overboard, slide overboard.

Q. Did anybody put that raft overboard? Did it fall over of itself? A. No; it was dangerous to touch it. It capsized and went overboard itself. If we had pushed it, it might have crushed the people.

Q. On the port side? A. It went over the skylight to the engine room; it went over on the starboard side. The raft was on the port side, and it went over on the starboard side, passing over the skylight to the engine-room.

Q. As far as you know, what boats were got into the water? A. No. 7, No. 9, No. 11; the two first

2068 boats on the port side were got into the water, the whaleboat and No. 4. No. 4 was lost.

Q. When you jumped into the water you jumped into the water on the starboard side, I understand? A. Yes.

Q. Before you jumped into the water did you see whether any boats had been got into the water on the starboard side? A. No, I didn't notice; I jumped overboard—I went below the surface when I went overboard out of sight.

Q. By my question was whether you looked before you jumped overboard? A. I can't say.

Q. How long before the vessel sank was it that
2069 you jumped overboard? A. Five or six minutes about; because I found myself almost in the suction that was produced by the going down of the ship. I had just time to pull myself out of it.

Q. Are you not able to tell whether after the collision the *Bourgogne* was going ahead, was put in motion again? A. I don't know.

Q. Did you see any other officers on deck except Pichard and Rempler? A. No, I didn't notice any others.

Q. What officers did you see on the bridge? A. I only saw the captain who was on the port side of the bridge.

Q. At what time did you see the commander
2070 there? A. About five or six minutes before I jumped into the water—before the ship sank I mean. I saw him while I was there waiting for the raft to get overboard.

Counsel for petitioner offers in evidence two photographs of the *Cromartyshire*, and they are marked Petitioner's Exhibits 24 and 25 of this date.

(Photographs in original form accompany the record.)

Recess.

DESIRE MAGEUR, being duly sworn and examined as a witness for the petitioner, testifies through an interpreter: 2071

By Mr. Jones:

Q. Where do you live? A. Lannon in France; Cote du Nord.

Q. You were one of the ordinary seamen on the *Bourgogne* when she came into collision with the *Cromartyshire?* A. Yes.

Q. Were you on watch at the time? A. Yes; I went on watch at four o'clock.

Q. Where were you stationed? A. I was on the spar deck, washing down on the starboard side.

Q. How was the weather when you went on watch? A. The weather was a little hazy (brumeux); but about ten minutes past four o'clock it set in very thick. 2072

Q. Do you remember how the sea was at the time? A. There was a little swell on; the sea wasn't bad.

Q. After the fog set in, state whether or not you heard the siren of the *Bourgogne?* A. Yes; the siren of the *Bourgogne.*

Q. From that time on what did you continue to do? A. We continued washing down.

Q. Were you all the time on the starboard side? A. Yes.

Q. What first called your attention to the ship which afterwards turned out to be the *Cromartyshire?* A. We heard a blast of a horn on the starboad hand. 2078

Q. Then what did you and your fellows on the watch do, if anything? A. We stopped washing down and went to the rail.

Q. What did you see? A. We saw the vessel; as soon as the blast of the horn was given she fell on us.

Q. Where did she strike the *Bourgogne?* A. She broke the davits of boat No. 1; then she pierced the canvas of the bridge with her bowsprit; she smashed the whaleboat No. 3 and boat No. 5, and then smashed in the side of our ship just forward of the first funnel.

2074 Q. About what distance, fore and aft, did the *Cromartyshire* penetrate or break into the *Bourgogne?* A. I can't say exactly; but three or four metres at least in length, about on the water line.

Q. After the collision took place what orders did you receive, if any, and what did you do? Go on and narrate the facts in your own way. A. I went to whaleboat No. 4; the life whaleboat No. 4.

Q. Is that the boat to which you were attached? A. No; I belonged to No. 2, but I went to the life whaleboat first.

Q. Did you have orders to go there? A. Yes; we had orders to get the whaleboat ready to lower
2075 away.

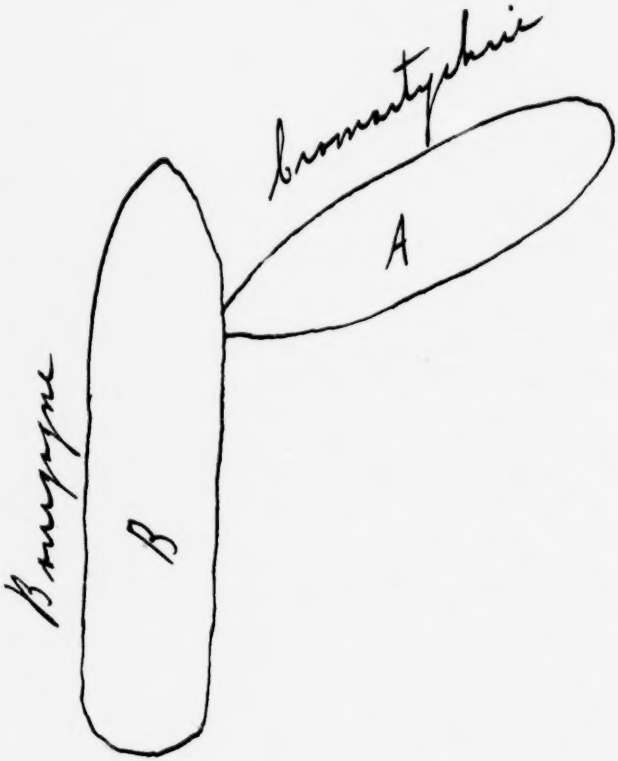
Q. From whom did you get that order? A. The second captain.

Q. Go on and tell what you did? A. We got the boat down to the level of the rail ready to lower away; then I went to boat No. 2, which was my boat; we swung her out and she came in and swung back in on to us two or three times, on account of the list of the ship. We finally succeeded in getting her out nevertheless down to the level of the water. We were some 50 people in her and in putting her into the water she got full of water and capsized and turned bottom up right away. I got up on her
2076 keel afterwards and I found a life belt within reach, and I jumped overboard and swam one or two minutes before the *Burgogne* sank; and after the ship had disappeared I got on to a raft and I was saved in that way. We waited for the fog to lift and we finally saw the *Cromartyshire*.

Q. Take these two models, supposing A to be the *Cromartyshire* and B the *Bourgogne*, and place them in the position in which the *Cromartyshire* came into the *Bourgogne?* A. That is the position, only the *Cromartyshire* struck the *Bourgogne* with her bowsprit before the hull struck the *Bourgogne* and broke the davits.

Witness makes diagram which is marked Petitioner's Exhibit No. 26 of this date.

Figure Décrit



Petitioner Exhibit 26

Act 25-01

Q. Did you see what sails the *Cromartyshire* had 2077
set? A. She had everything set; all her sails set except the main royal.

Q. What did you estimate her speed to have been when she collided with the *Bourgogne?* A. With the wind that there was and the sail that she had on, it might have been from 4 to 5 knots.

Q. Did you observe what injuries were done to the *Cromartyshire* by the collision? A. Yes; her whole forward part was smashed in. Her foremast was carried away at the masthead, flush with the hounds.

Q. I show you two photographs marked respectively Petitioner's Exhibits 24 and 25 of this date, 2078
and ask you if you can identify them as correctly representing the injuries that were done to the *Cromartyshire?* A. Yes; the forward part of the ship—that seems to be about it. The mast is not altogether shown there. I didn't examine them very carefully, but that appears to be about it.

Q. What became of boat No. 2? A. She wasn't picked up afterwards.

Q. Did any accident happen to her? A. She filled with water and turned over.

Q. Did that render her useless for any service in saving people? A. There were five or six people who were saved from off her keel, who were picked 2079
up by boat No. 9 afterwards.

Q. How were you finally saved? A. On a raft.

Q. On what raft was that? A. The one on which Mr. and Mme. Lacasse were.

Q. Was Mr. Laisné on that raft? A. No. We fell in with another raft which had one man only on it, and we put some people on that raft; afterwards boat No. 4 came and towed us alongside the *Cromartyshire.* When this whaleboat came I got into the whaleboat and lent a hand to row her. We took one of these rafts in tow and towed her to the

2080 *Cromartyshire*, and then came back and got the other one. Then I went on board the *Cromartyshire*. That was about half-past one in the afternoon.

Q. After the collision did you see anything of the captain and the second captain, Mr. Dupont? A. Yes.

Q. Do you know what they were doing? A. The commander was on the bridge and Mr. Dupont was giving orders to get the boats out into the water.

Q. Did you see any of the other officers of the ship? A. When I was at boat No. 2 the second captain came there for a moment and returned back
2081 to where the commander was. I didn't see any other officers at the spot where I was.

Q. Did you observe any disorder or excitement on board? A. No.

Q. Do you know anything about the speed of the *Bourgogne* at the time of the collision? A. No. I was occupied with my work and I didn't pay any attention to the speed.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Were you examined as a witness in the English court? A. I was in London, but I wasn't asked any questions.

Q. Were you not asked any questions as to the
2082 collision by anybody in London anyhow? A. No; I suppose I was sent over as an extra man.

Q. Were you examined in reference to the matter in Havre? A. Yes; I was examined before Mr. Aubert; when we arrived after the wreck.

Q. Did you talk with anybody connected with the company about the matter of the collision and what happened afterwards in Havre? A. No.

Q. When did you come to this country this time? A. I came by the *Champagne;* we left Havre the 20th of September; I don't remember just the date we got here.

Q. Have you ever been to this office before to-day? 2083
A. Yes, I have been here.

Q. How many times have you been here? A. Several times; every time I have been sent for.

Q. Have you talked with anybody in the office about the matters of the collision or loss? A. No.

Q. No questions been put to you as to the facts of the collision? A. No.

Q. Have you at any time read or heard read any of the testimony that you gave before Commander Aubert? A. No.

Q. Who else has been with you here in this office while you have been here? A. Those witnesses who are here now and those who have already left. 2084

Q. Have you talked with any of them at any time about the collision and what happened? A. No.

Q. Then I understand you to say you have never talked with anybody about the facts of this collision except when you were examined by Capt. Aubert; is that correct? A. Yes.

Q. Which was the watch that you were attached to? A. The port watch.

Q. How many sailors were in that watch? A. I don't remember how many we were.

Q. About? A. Sixteen or 17 in each watch, including the quartermasters.

Q. Did all the watch come on deck at that time, at four o'clock? A. Yes. 2085

Q. Where did you go when you first came on deck? A. On the spar deck; starboard side.

Q. Did any of the others of the watch go with you there? A. All of the watch, excepting the man on the lookout and the quartermasters.

Q. Who was the officer in charge of the watch? A. The second captain.

Q. What was his name? A. Mr. Dupont.

Q. Did you hear any orders as to anybody going on the lookout? Did you hear any orders about it? A. Yes.

2086 Q. What orders did you hear given? A. At ten minutes past four a second man was sent on the lookout.

Q. Had you heard any orders before that? A. At four o'clock, when the watch was changed, the two men were relieved and two others sent by the boatswain on the lookout.

Q. Who was the boatswain? A. Petiot.

Q. Did you see those men go forward? A. Yes.

Q. What were their names? A. Blouin and Toupin. There was one up aloft and one on the topgallant forecastle.

Q. Which one went aloft and which one was on
2087 the forecastle? A. Toupin was aloft and Blouin was on the forecastle.

Q. Do you know who they relieved? A. No, I don't know; it was the other watch, and I don't know who they were.

Q. Where was the boatswain when he gave that order for these two men to go on watch? A. He was down on the topgallant forecastle. There was a ladder down there by which you came up.

Q. He wasn't on the forecastle, was he? A. He was on deck down below the topgallant forecastle. There was a ladder that leads up to the forecastle.

Q. How near to him were you? A. I was right
2088 alongside of him; I could touch him. He calls the watch at four o'clock and then they name those who shall go to the different places.

Q. When they had gone did you then go to the starboard side of the deck, washing the deck? A. Yes.

Q. Did the boatswain go with them? A. He was washing down decks with us.

Q. Did you hear any other order given by the boatswain besides the one that you have spoken of? A. No.

Q. How many men were engaged in the washing of the decks? A. Eight or ten about.

Q. Can you give the names of any of them? A. 2089
Yes.

Q. Who? A. L. Valer, Le Breton, Le Bris, and several who were drowned.

Q. Did those men that you have named go to washing the decks at the same time you did? A. Yes.

Q. Where did you begin washing the deck? A. We began holystoning the deck forward of the bridge.

Q. How far did you get at the time of the collision? A. We had already been holy-stoning the deck and had gone from one end to the other and had come back and were washing down. 2090

Q. Do you mean that you had come back to the place where you had started after finishing the holy-stoning? A. Yes.

Q. How far aft had you got with the washing? A. We were still holy-stoning; we don't wash until six o'clock.

Q. How far aft had you got in the holy-stoning? A. We had made two or three times the circuit of the spar deck on the starboard side.

Q. You hadn't done any work on the port side? A. No.

Q. Did any of the watch go up on the bridge except the quartermasters? A. No; the officers of 2091
the watch of course; there are four quartermasters in each watch.

Q. Was there a man by the name of Carré in the watch? A. Le Corre.

Q. Was he washing decks with you? A. He was on the bridge.

Q. Haven't you just said that none of the watch went up on the bridge except the wheelsman? A. He is a quartermaster.

Q. How many quartermasters were there that went up on the bridge? A. Four.

2092 Q. What were the names of them? A. I don't remember anybody except Le Corre; I don't remember their names.

Q. Were you any better acquainted with Le Corre than you were with the others? A. No.

Q. How do you remember his name when you can't remember any of the others? A. Because I have seen him several times since. He even loaned me a woolen shirt when I got on the *Cromartyshire*. I was almost naked.

Q. When have you seen Le Corre? A. I think it will soon be a year and a half; he went to China after that.

2093 Q. When you first saw the *Cromartyshire* how far away was she? A. As soon as she blew her horn she fell right upon us. I didn't have time to examine the distance.

Q. Can you give no estimate of the distance that she was when you saw her? A. No.

Q. Then you didn't have time to see what sails she had on, did you? A. When she fell on us we saw.

Q. Could you see from where she was any of her sails but her head sails? A. When she fell on us we saw her sails, as soon as we saw her coming into us.

2094 Q. You could see all the sails, could you—not merely the head sails? A. Yes; everything excepting the royal, which she didn't have set.

Q. Did you see the *Cromartyshire* at all after the vessels got separated? A. No; only when we went aboard of her.

Q. Did you look to see her at all after the vessels separated? A. You couldn't see on account of the fog.

Q. How far could you see her through the fog? A. Not five metres; you couldn't see at five.

Q. How many metres long was the *Bourgogne?* 2095
A. 155 I think.

Q. And you say you couldn't see the *Cromartyshire* the length of the *Bourgogne?* A. Oh, no.

Q. How long do you think the *Cromartyshire* was? A. I don't know.

Q. About what do you think? Do you think she was 50 metres long? A. More than that. She was at least 70 metres long. She was a large vessel; she must have been at least 70 metres long.

Q. Then, according to what you say, you couldn't see the after part of the *Cromartyshire* at all from the deck of the *Bourgogne?* A. She wasn't 50 metres away from us when she fell on top of us; she 2096
was touching us.

Q. If her stem touched you and she was more than 50 metres long, her stern must have been more than 50 metres away, mustn't it? A. I say 50 metres more or less that you could see; I am not giving this exactly.

Q. Do you know exactly then about the sails? A. Yes.

Q. You first went, as I understand it, to whaleboat No. 4? A. Yes.

Q. Was there anybody there at the whaleboat No. 4 when you got there? A. No; there was nobody there before we got there; we arrived there all to- 2097
gether.

Q. So that nothing had been done to getting out that whaleboat before you took hold of it? A. No.

Q. Which side was that whaleboat? A. The port side.

Q. How many men went to that whaleboat? A. About ten.

Q. How long a time do you think it was from the time of the collision till the vessel sank? A. 30 to 35 minutes.

Q. How long were you at the whaleboat No. 4?

2098 Q. During all that time that they were working
A. About five or six minutes.
to get the whaleboat? A. Yes. Then I went to whaleboat No. 2.

Q. Did you get whaleboat No. 4 into the water? A. We lowered her level with the rail, and then I left it and went to boat No. 2.

Q. During that time was the steamer going ahead? A. Almost none.

Q. Was there any time when she was started ahead after that before she sank? A. I don't know. She had no headway; she couldn't have gone ahead.

Q. You were working at these different boats that
2099 you have spoken of, and yet do you say that you can't tell that the steamer was going ahead? A. No; we were busy putting the boats out; when we got that boat down flush with the water the ship didn't have any headway.

Q. Don't you know that after the collision Capt. Deloncle started the boat for Sable Island? A. I don't know.

Q. Did you never hear any such thing as that said? A. No.

Q. When you left the whaleboat was there anybody in her? A. Two or three men who remained there.

2100 Q. Were they any of them passengers? A. No; they belonged to the crew.

Q. Was there anybody left in charge of that boat? A. I don't know; everybody went to his boat station and I suppose those men belonged to that boat.

Q. Did the boatswain go with you to No. 4? A. Yes; to help get it out ready to lower away, and then he went off to another boat.

Q. When you got to No. 4 had anybody gone to get that boat out? A. No; nothing had been done.

Q. Did you go to work trying to get out No. 4? A. Yes.

Q. How long did you stay at No. 4? A. About 2101
five or six minutes; until she was got down flush with the rail ready to lower away.

Q. Did anybody get into her when she was ready to lower away? A. No. I think there were two or three men in her when I left her.

Q. Where did you go when you left her? A. To boat No. 2.

Q. Had anything been done to get out No. 2 when you got there? A. Yes; there were people there getting her out.

Q. How long did it take to swing her out? A. We put her out two or three times and she swung back again every time, on account of the list of the 2102
ship. We had a great deal of trouble getting her out finally.

Q. (Repeated.) A. We were at least a quarter of an hour.

Q. What made her capsize? A. She filled with water first and there were too many people in and she capsized afterwards.

Q. How many people would you say there were in her? A. 50 odd; I didn't count them.

Q. You say there were too many people in her. How many was she fit for? A. I don't know how many she could hold. She filled by the stern; I think there were too many people in the stern of 2103
her.

Q. Was there any officer there at that time? A. No.

Q. Did you see any officer at any time at boat No. 2? A. The second captain had been there giving orders with regard to the boat, but had left her.

Q. He left her before you got her out? A. Yes. Everybody wanted to get in when she was swung out.

Q. Were you in her when she capsized? A. Yes.

Q. Was Valer in that boat? A. Yes.

2104 Q. And Le Bris? A. No.

Q. And Le Breton? A. No.

Q. Was there anybody in that boat that was saved besides yourself and Valer? A. The assistant purser was saved.

Q. What is his name? A. Scon.

Q. Was he a Frenchman or an Englishman? A. A Frenchman.

Q. Did you see the *Bourgogne* when she sank? A. Yes.

Q. How far away from her were you? A. A hundred metres or so, swimming.

Q. Did you get on the raft before she sank? A.
2105 No; I got on about half an hour after the ship disappeared.

Q. How many rafts did you see in the water? A. Four. I only saw that one at that time.

Q. Did you help get any of those rafts overboard? A. No.

Q. When was it that you saw the other raft with a man on it? A. After the wreck.

Q. How long after? A. About two hours after, when the fog lifted.

Q. Do you know the man that was on it? A. I don't recollect. It was a fireman.

Q. Did you see any other raft besides the one
2106 that you were on and that one with the one man on it? A. When we got on board the *Cromartyshire* we found other rafts made fast alongside.

Q. But you hadn't seen them until then? A. There was one out of sight at the stern of us, which we hadn't seen; there was one made fast alongside the *Cromartyshire*, and the second that I speak of, and the one that came in afterwards that I hadn't seen.

Q. Did you hear Capt. Deloncle give any order? A. No; the second captain was the one who gave the orders to us.

Q. Tell any order that you heard the second captain Dupont give? A. "Get ready the lifeboats."

Q. Any other than that? A. Not at that time. But afterwards he said, "Send every man to his station."

Q. How long a time was there between those two orders? A. At once.

Q. Did you hear any order given by Dupont after that? A. No; we weren't together after that.

Q. Did you hear any order given by any other officer of the ship at all? A. No.

Q. Did you see Capt. Deloncle before the collision? A. I saw him about half-past four.

Q. Where was he then? A. He was on the bridge. 2108

Q. Did you see him anywhere from that time until after the collision? Did you see him between half-past four and the collision? A. Yes; I saw him on the bridge.

Q. When? A. I saw him up to the time of the collision.

Q. All the while? A. Yes; he and Mr. Dupont.

Q. Did you see him come off the bridge at any time after the collision? A. No.

Q. Do you say that there was no disorder on the deck of the *Bourgogne* before she sank? A. No; there was no disorder.

Q. No excitement? A. No.

Q. No women screaming? A. There were women 2109
cried and children cried.

Q. What about the men? A. No, everybody was busy getting out the boats.

Q. Did you see the engineer Laisné at any time after the collision? A. On board the *Cromartyshire.*

2110 JEAN CALVARY, being duly sworn and examined, through the interpreter, as a witness for the petitioners, testifies:

By Mr. Jones:

Q. Where do you live? A. Treyvoux, cote du Nord, France.

Q. You were on the *Bourgogne* at the time of her collision with the *Cromartyshire?* A. Yes.

Q. What was your position? A. Fireman.

Q. Were you on watch at the time of the collision? A. Yes.

Q. What time did you go on watch? A. At two o'clock.

2111 Q. How long did your watch last? A. Four hours; from two to six.

Q. Then the collision occurred while you were on duty? A. Yes.

Q. Where were you stationed and what were you doing when the collision occurred? A. I was oiling the engine.

Q. How long had you been doing that? A. Half an hour; we do it every half hour; I had been oiling all the time from the time I went on watch.

Q. Was your attention called to the fact that there was fog some time before the collision? A. Yes.

2112 Q. How did you come to observe that? A. We slowed down and diminished the speed, reduced the speed.

Q. Did you hear the siren of the *Bourgogne?* A. No.

Q. Do you remember about how long before the collision you began to slow down? A. The engine was slowed down three times before the collision.

Q. Do you remember what the first slowing down was, about how much slowing down there was? A. Yes; I can't say how many turns we slowed down the first time.

Q. Then what became of you? A. Then we found 2119
the ship that had run into us.

Q. Did you get on board of her? A. The whale-boat came from her after us.

Q. You got on board and were taken to Halifax? A. Yes.

Q. Did you see anything of the captain or second captain or any of the officers of the ship when you came on deck? A. No.

Q. Did you hear any orders given by any of the officers? A. No; not on the deck.

CROSS-EXAMINED BY MR. BENEDICT:

Q. How long have you been in the employ of the 2120
company? A. Since 1886.

Q. What steamers have you served on? A. *La Gascogne, La Bourgogne, La Champagne, La Bretagne* and *La Touraine*, and the *St. Simon*, which I have just left.

Q. How old are you? A. Thirty-nine.

Q. Can you read and write? A. No.

Q. How long had you been on the *Bourgogne* at the time of this voyage? A. That was my second voyage on her.

Q. Were you examined as a witness in the English court? A. No.

Q. Did you go to England at that time? A. No. 2121

Q. Where were you at that time, when that trial was taken place? A. At that time I was in the hospital.

Q. How long had you been in the hospital? A. I was in there two weeks, about; the trial was finished before I got out of the hospital.

Q. How long before the trial did you go in the hospital? A. About eight days before the trial began I went into the hospital.

Q. Did you know that there was going to be a trial? A. Nobody said anything to me about it.

2122 Q. How do you know that it was about eight days then? A. I heard it from my friends when they got back.

Q. From whom? Mention them? A. Fortin, who was here; he was there.

Q. Had anybody ever spoken to you about going to England to attend on that trial? A. No.

Q. Were you examined before Commander Aubert at Havre? A. Yes; when we arrived.

Q. Was anybody else present at your examination, except Commander Aubert? A. No; we were alone and we went in one after the other.

Q. There was no one else present in the room except Commander Aubert and you? A. No; we were
2123 alone; he and I.

Q. Had anyone ever asked you anything with reference to the facts of the collision before that time? A. No.

Q. Have you ever heard read or been told anything about your examination at that time, since then? A. No.

Q. Have you ever talked with anybody connected with the company since your examination before Commander Aubert, about the facts of the collision? A. No.

Q. When did you arrive in this country? A. About a month ago.

2124 Q. Have you been here for the last month? A. Yes; more than that.

Q. What have you been doing? A. Coming here every day.

Q. Have you ever talked with anybody in this office with reference to the facts of the collision? A. No.

Q. No questions been put to you by anybody in this office as to the collision? A. No.

Q. Not until to-day, when you were examined now? A. No.

Q. Haven't you talked with anybody else outside 2125
of this office as to the facts of the collision? A. No; I haven't busied myself with that.

Q. Were you present in court at any time of this trial, in the court room here in New York? A. Yes.

Q. Who are these two gentlemen who sit here (referring to Mr. West and Mr. Deprez)? A. I know them.

Q. What are their names? A. I don't know his name; I know him by sight (Mr. West).

Q. Don't you know either of them? A. Yes; that is our chief that is with us (Mr. Deprez).

Q. What is his name? A. Mr. Deprez.

Q. Has neither of those gentlemen ever talked 2126
with you at all about the collision and about your giving testimony in the case? A. No; never.

Q. Did you not know that you were coming to New York to give testimony in this case? A. No.

Q. What ship did you come here on? A. On an American ship; I came here from Port au Prince.

Q. How did you happen to come here from Port au Prince? A. We got notice from France to send us here.

Q. Who gave you that news? A. The captain of our ship.

Q. Of what vessel? A. The *St. Simon.*

Q. That is one of the company's vessels, is it? 2127
A. Yes.

Q. He told you that you were coming here to be examined as a witness, didn't he? A. Yes.

Q. With reference to the facts of the loss of the *Bourgogne?* A. He told us that it was for a trial; but he didn't tell us why.

Q. He told you it was about the loss of the *Bourgogne,* didn't he? A. He told us it was the *Bourgogne* trial.

Q. Didn't he ask you at all what you knew about the loss of the *Bourgogne?* A. No, no, no.

2128 Q. You have said that you couldn't read or write; can you count numbers? A. Yes; I know what time of day it is.

Q. County fifty?

Witness counts from 1 to 50.

Q. You have said that your position on the *Bourgogne* was that of fireman? A. Yes.

Q. How many other firemen were there in that watch, your watch? A. We were twelve firemen and seven coal heavers.

Q. Tell me the names of the firemen that you know? A. I can't.

2129 Q. Don't you know the name of a single one? A. Yes; I can a few.

Q. Tell me every name you know who was a fireman? A. Fortin, Fraval, Rallec, Rallegif.

Q. Can you give us the name of any of the coal heavers? A. No, I can't.

Q. How long had you been a fireman on the *Bourgogne?* A. This was my second voyage.

Q. Had you ever served on her in any other capacity? A. No.

Q. What time did your watch begin? A. At two o'clock in the morning.

Q. Where was the place where you slept, where did you turn out from? A. From our quarters.

2130 Q. Where did you go from your quarters? A. In the engine room.

Q. Did you get any orders to go to the engine room? A. Yes.

Q. Who gave the order? A. The chief of the watch.

Q. What was his name? A. Gautier.

Q. He was the chief engineer, was he not? A. No; he was the chief of the watch.

Q. Wasn't Mr. Gautier one of the engineers? A. Yes; he was the chief of the watch.

Q. Was there any starting up from that slowing 2113
down, or was the next change slower still? A. We reduced it more.

Q. How about the other changes, if any? Were they reductions of speed, or going ahead? A. The third one was a diminution of speed to about 43 turns.

Q. Do you remember about what the number of revolutions were at the time of the collision? A. Yes; about 43.

Q. At the time of the collision what manœuvres did the engine make? A. We stopped; just as soon as the collision took place the engine was stopped.

Q. Do you remember whether any order was 2114
given in the engine room just before the collision? A. No; I don't recollect that any was given.

Q. Do you remember what orders were given and executed in the engine room after the collision? A. Yes.

Q. What were they? A. The chief engineer came down; orders were given to set the pumps going right away.

Q. Any other orders? A. To close the water-tight bulkheads all over.

Q. Were there any orders given to the engine that were executed? A. No.

Q. After the collision took place just go on and 2115
tell us what you saw and what you did, and give your story in your own way. A. I remained there with the chief engineer at the starting bar. We remained there up to the last moment.

Q. Who, besides you and the chief engineer, were there? A. There were two engineers there who were occupied setting the pumps going; that is all; we were four in the engine room.

Q. Did the water come into the engine room after the collision? A. Yes.

2116 Q. How soon after? A. About ten minutes after the collision.

Q. What did you and your fellows in the engine room do? A. There were about four meters of water in the engine room when we left it.

Q. How or why did you come to leave it? A. We couldn't stay in there and I got up by the stairs; by the ladder.

Q. Had the fires been put out? A. I can't tell you.

Q. How much water was there in the engine room? A. Four meters, about.

Q. Did you notice whether the electric lights went
2117 out? A. Yes; they were out.

Q. After you quit the engine room what did you do? A. After I quit the engine room I went up on the spar deck.

Q. Then what? A. I went over to the other side of the ship, because the boats on the port side couldn't be got out.

Q. What did you do on the starboard side? A. I jumped overboard.

Q. Did you have anything to do with the lowering of any of the lifeboats on the starboard side? A. No.

Q. Did you see whether any of the lifeboats on
2118 the starboard side were smashed by the collision, or broken? A. No, I didn't notice.

Q. What became of you after you went on the starboard side and jumped overboard? A. I swam around there about three-quarters of an hour, and then I got on to a raft.

Q. Who were on the raft with you? A. We were about sixteen or seventeen on there; I don't know their names.

Q. Was Mr. Laisne there? A. No.

Q. How long did you remain on the life raft? A. About three hours.

Q. Where was he when he gave you that order? 2131
A. He was down in the engine room.

Q. You say that Gautier, when he gave you this order, was down below in the engine room? A. Yes.

Q. How did you come to go to the engine room? A. That was my place to go to.

Q. Where did the rest of the firemen go? A. They went in the fire room.

Q. Did you go with them? A. No; we don't pass through the same place.

Q. Who don't go through the same place? A. The firemen have another ladder to go down into the fire room; those who are in the engine room go down another way.

2132

Q. Do you say that the firemen go into the engine room and not to the fire room? A. They go down into the fire room by another ladder, another way.

Q. You have said that you were a fireman and you never were in any other capacity than a fireman? A. Yes.

Q. Then why didn't you go with the other firemen when you went on watch? A. I was told to stay with the engineer.

Q. Who told you to stay with the engineer? A. The chief of the watch told me to stay there with him and oil the engine.

Q. But how did you come to go there in the first place, without an order? A. When we got orders 2133
to go below to the engine I was told to go there.

Q. Haven't you said that you got orders from Gautier and that he was down below when he gave you the order? A. Yes.

Q. Then you didn't go down there by reason of any order? A. He shouted to me from down below to come down there.

Q. To you, by name? A. Yes; he called me down; I was up above and he called me down.

Q. What were you doing up above when you

were called down? A. I was waiting there to go into the fire room with my colleagues.

Q. Did any others of the firemen get orders to come down there besides you? A. No.

Q. When you got down into the fire room who was there? A. Mr. Gautier and an oiler.

Q. Who was the oiler? A. I don't know what his name was; I don't recollect about his name.

Q. Was there any body else there but those two men? A. No; that is all.

Q. Would you know the name of that oiler, if you heard it? A. I couldn't say; it was the first time that I saw him; I think it was the first time he was below with me.

Q. How many oilers were there in your watch? A. Two; there were two that were called oilers and then there were two that were detached for that business.

Q. Were you called an oiler? A. No, I wasn't; I was detached; I was detached to replace one who was sick.

Q. Do you know who it was that was sick? A. Yes.

Q. Who was it? A. Bozec.

Q. But wasn't Bozec a fireman and not an oiler? A. He was a fireman and I replaced him at his post in the engine room.

Q. When did you replace him? I mean on that voyage? A. At two o'clock in the morning of that day.

Q. The day before, then, you hadn't taken his place? A. No.

Q. On the voyage of the *Bourgogne* coming over from Havre to New York, had you taken the place of any other man? A. No.

Q. You had served only as a fireman then on the voyage from Havre to New York? A. Yes; it was on the voyage from New York to Havre that I replaced Bozec.

Q. This, you say, was your second voyage on the 2137
Bourgogne. On the previous voyage had you replaced anybody? A. No.

Q. You served only as a fireman on that voyage then? A. Yes; I didn't oil any.

Q. You said that you took the place of Bozec. Anton Bozec? A. Yes.

Q. Was he saved? A. No.

Q. I understand you to say that the engine was oiled every half hour. Is that the fact? A. Yes.

Q. How long did it take to oil the engine? A. When we had the time we took ten minutes or a quarter of an hour.

Q. After two o'clock were there two of you en- 2138
gaged in oiling the engine? A. There was one up above and one down below. Each one at his post.

Q. Which were you, above or below? A. Down below.

Q. The first time that you greased the engine tell us just exactly what you did. A. I put oil in the cups to prevent the engine from heating.

Q. How many cups? A. Ten or so.

Q. Do you have to go into the engine for that purpose? A. No; you don't go in among the works.

Q. You do it from the front of the engine? A. Yes; from the floor.

Q. How big is that place which is in front of the 2139
engine? A. It is the length of the engine room, and perhaps a meter and a half wide.

Q. From side to side do you mean? A. Yes; where the officer walks.

Q. When the engineer stands at the front of the engine which way does he face; towards the bow or stern? A. He stands around sideways. He looks across the ship.

Q. Do you know whether there was a blackboard in the engine room? A. Yes.

Q. Do you know what it was for? A. Yes.

2140 Q. What was it for? A. To put down the numbers of the revolutions of the engine before leaving the watch.

Q. Is that all that is put on the blackboard? A. I saw writing on there, but I don't know what it was, because I don't know how to read.

Q. Did you see the engineer at any time writing anything on that blackboard? A. Yes; every watch.

Q. But from two o'clock did you see any engineer write anything on that blackboard? A. Yes.

Q. Did you see him write more than once? A. No.

Q. Only once? A. Only once.

2141 Q. How soon after two o'clock did you see the engineer write? A. About three o'clock, before the quartermasters came down from the bridge.

Q. What quartermasters came down from the bridge? A. The one who was on watch. They came down to take the numbers of revolutions that were being made.

Q. Do you know who that quartermaster was? A. I don't know which one it was.

Q. Was it Alain? A. I can't say.

Q. Do you know whether that quartermaster who came down, as you say, was saved? A. I can't say.

Q. Did you see the quartermaster when he came down? A. Yes.

2142 Q. How long did he stay below? A. Two or three minutes; just the time to take the number of revolutions.

Q. That was after you had seen the engineer write on the blackboard, was it? A. Yes; at a quarter of four he came down to take the number of revolutions.

Q. Did you hear any bells rung in the engine room after two o'clock? A. No.

Q. Did you hear any spoken word from outside of the engine room after two o'clock? A. No;

when we are shut up in the engine room we can't 2143
hear what is going on up above.

Q. Did you hear the siren at any time? A. No.

Q. Did you do anything in the engine room from the time that you went down there at two o'clock, except oil the engine, as you have stated? A. No.

Q. Did you hear any orders given by the engineer during that time, to any one? A. No.

Q. Or by the chief of the watch? A. No.

Q. Who was the chief engineer? A. Dalidot, and Gautier was the chief of the watch.

Q. And you heard no orders given by either of those men after two o'clock? A. No.

Q. Did any other person come into the engine 2144
room after two o'clock except this quartermaster that you speak of? A. I didn't remain plainted there all the time during my four hours. I was moving around.

Q. Did you go out of the engine room? A. I didn't leave the engine room, no; but I had to go and visit the different parts of the engine, and move around.

Q. (Repeated.) A. No, not that I saw.

Q. Do you know how to run an engine? A. Me? No.

Q. Do you know what is done when they wish to stop the engine, or slow it, or make it go ahead? A. 2145
Yes; we shut off steam; to go ahead you let in steam.

Q. Do you know what the engineer does when they wish to make the engine go faster or slower? A. Yes.

Q. What does he do? A. When he wants to go fast he lets in more steam.

Q. How does he do it? A. There is a valve there that you open and close.

Q. Do you know whereabouts in the engine room from side to side that valve is? A. It is right close

2146 by the starting bar. It is a throttle valve; that is what I mean.

Q. Do you know how many turns the engine of the *Bourgogne* makes when she is going at full speed. A. About 62.

Q. How do you know that? A. Because we hear that from the engineer when we are down in the engine room.

Q. Did you ever count the full turns? A. No.

Q. Did you ever count the turns of the engine of the *Bourgogne?* A. No, never; that wasn't my business.

Q. Do you know whether there was a telegraph in
2147 the engine room? A. Yes; there was one.

Q. Where was it? A. Opposite the starting gear.

Q. Can you tell what was on the face of the telegraph? A. Yes, there was glass on it.

Q. You couldn't read any numbers or figures or letters that were on it, could you? A. No.

Q. So you don't know what orders there were on it? A. No, I do not.

Q. Did you at any time while you were in the engine room look at that telegraph after two o'clock? A. When I went by it I had to see it.

Q. And that is all. No other way? A. No, that is all; I didn't look at it especially.

2148 Q. Was Gautier on the watch all the time, from two o'clock until the collision? A. Yes.

Q. When you were not oiling what did you do? A. I walked back and forth there; on the floor there.

Q. Did you ever walk in front of the dynamos; the electrical machines? A. Yes; I walked between the electrical machines and the engine.

Q. Are not the electrical machines on the side of the engine? A. Yes; opposite; one is opposite the other.

Q. But are not those arranged along the side of

the engine? A. Yes, fore and aft; the length of the 2149
ship.

Q. And in order to walk in front of the dynamos you have to walk between them and the engine, do you not? A. Yes.

Q. Do you say that you walked fore and aft between the dynamo and the engine, or that you walked athwartships. A. The length of the ship, fore and aft; you can't walk athwartships.

Q. Did you know when the vessel struck? A. Yes; we felt the shock down below.

Q. Did you hear any order given to the engine room after the shock? A. The chief engineer came right down there at once.

Q. (Repeated.) A. No. 2150

Q. Do you say that the engine was stopped after the collision? A. At once.

Q. Who did it? A. The chief engineer Dalidot.

Q. So that the engine wasn't stopped until after Dalidot came into the engine room? A. He was the one who stopped it.

Q. How long after that did you stay in the engine room? A. Up to the time we left it finally.

Q. How long was that? A. Perhaps twenty minutes.

Q. Do you say that the engine was not started ahead at all during that time? A. No, it was not started ahead. 2151

Q. Did you hear any orders given by either Dalidot or Gautier after the collision? A. Mr. Gautier, as soon as the collision took place, went into the fire room; Mr. Dalidot gave the order to close the water-tight doors.

Q. Who did Dalidot give that order to? A. To Mr. Gautier.

Q. And then did Gautier immediately leave the engine room? A. Yes, he left the engine room immediately to go into the fire room.

2152 Q. Did he come back into the engine room again? A. I didn't see him after.

Q. Did you hear Dalidot give any other orders? A. No.

Q. Did you hear Mr. Gautier give any order at all? A. No.

Q. Were you oiling the engine at the moment of the collision? A. Yes.

Q. On which side of the engine were you? A. The port side.

Q. When you were oiling the engine where did you have to go in order to oil it? A. It is only the movements front on the port side. I meant the port
2153 side of the ship. I was a little abaft the starting gear on the port side of the ship; but the front of the engine.

Q. You have said that you noticed a slowing of the engine? A. Yes.

Q. How long after you came on watch did you notice that slowing? A. About a quarter to three, the first time.

Q. How long after you went on watch? A. That makes an hour and a quarter; about a quarter past three.

Q. How long after you went on watch do you say that you noticed any slowing of the engine? A. About a quarter past three; an hour and a quarter
2154 after I went on watch.

Q. How did you know the time? A. Because I looked at the clock.

Q. How did you notice that there was any slowing of the engines? A. Because I saw Mr. Gautier doing it.

Q. What did you see him doing? A. I saw him close the throttle.

Q. Did you notice anything else, except that he was at the throttle? A. No; I saw him closing the

throttle; without that he wouldn't have been able 2155
to shut off steam.

Q. Was not the speed of the engine increased after that? A. No.

Q. Did you not swear, when you were examined before Commander Aubert, that the speed of the engine was increased twice after two o'clock? A. No.

Q. Did you swear, before Commander Aubert, that the speed of the engine was never increased after two o'clock? A. I didn't swear; he asked me whether we had increased the speed and I told him no.

Q. So that you now say, as I understand it, that at no time after two o'clock was the speed of the 2156
engine increased as far as you know? A. No; the speed was not increased.

Q. Do you say that the speed of the engine was diminished more than once? A. Yes.

Q. How many times was the speed of the engine diminished? A. Three times.

Q. You say the first time was about a quarter past three. When was the second time? A. The second time was about twenty minutes of four.

Q. When do you say that the speed was decreased the third time? A. The third time we stopped the engines.

Q. Before the collision? A. Twice before the 2157
collision, and the third time at the time of the collision.

Q. Do you know how it came that Gautier diminished the speed that first time? A. He closed the throttle valve.

Q. What made him do it then? A. He got an order from up above.

Q. Haven't you just testified that you didn't hear any orders from above? A. I didn't hear any orders, no.

Q. Then how do you know that he did it because

2158 of an order? A. Because it was telegraphed from the bridge.

Q. How do you know? You said you didn't look at the telegraph. How do you know? A. You don't have to look at the dial; you hear the noise.

Q. Hear what noise? A. You know very well when you make the telegraph work it makes a noise.

Q. Is there a bell to it? A. Yes.

Q. Haven't you testified that you hadn't heard any bell after two o'clock? A. No; I didn't say that.

Q. Do you say that you did hear any bells at any time? A. Yes; I say it again; when the speed was
2159 diminished I did hear it; but there is considerable noise in the engine; but you can always hear that telegraph.

Q. When you heard that telegraph did you look at the dial to see what it was? A. No.

Q. Did you hear a bell after that? A. No, that is the only time I heard it; the first time that the speed was reduced.

Q. You only heard the sound of the telegraph then once? A. Yes; I wasn't there looking all the time; I was busy elsewhere.

Q. And that time that you heard the telegraph you say was at a quarter past three? A. Yes.

Q. You say then that you didn't hear any tele-
2160 graph at the time of any second diminishing of the speed? A. No.

Q. How do you know that there was any such second diminution? A. Because I came there just as Mr. Gautier was shutting off the throttle valve.

Q. Came where? A. I came there from finishing my oiling.

Q. What did you see when you came there? A. I saw Mr. Gautier who was closing the throttle valve.

Q. How do you know he was closing it? A. He

told me so; he told me that he was reducing speed 2161
still more.

Q. Is that all you know about it? A. Yes.

Q. Did you ask Mr. Gautier what he was doing? A. No; he told me.

Q. How did he come to speak to you? What did he say? A. Because we talked together.

Q. What did he say? A. He said, "I am reducing speed still more."

Q. Is that all that he said? A. Yes.

Q. Do you remember anything else that Mr. Gautier said to you during that watch, except that? A. We joked from time to time when we passed each other, when we had time. 2162

Q. Do you remember anything else that he said to you during that watch, except what you have told now? A. When we were passing each other he asked me if everything was going all right; in such a part of the engine, or another part; we joked together.

Q. Did you tell Commander Aubert that Mr. Gautier told you he had diminished speed? A. Yes.

Adjourned.

2163

2164 NEW YORK, October 30, 1901.

DEPOSITIONS taken out of court, by the order of the Court, at the office of Edward K. Jones, Esq., Nos. 49-51 Wall Street, New York City, on the 30th day of October, 1901.

Present—EDWARD K. JONES., Esq., for the Petitioner.
Messrs. BENEDICT & BENEDICT, for George Deslions *et al.*
A. GORDON MURRAY, Esq., for W. C. Perry *et al.*
G. T. GOLDTHWAITE, Esq., for Harry
2165 S. Jones and Alice B. Evans, as administrators (4 cases).
A REPRESENTATIVE from Messrs. BULLOWA & BULLOWA, for Carre *et al.*
Mr. STETSON, the interpreter.

YVES PIERRA, being duly sworn and examined, through the interpreter, on behalf of the petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. I live in Havre.

2166 Q. You were one of the crew of the *Bourgogne* when she foundered after a collision with the *Cromartyshire?* A. Yes.

Q. Were you on watch the morning of the collision? A. Yes.

Q. When did you go on watch? A. At four o'clock.

Q. What duties were you performing that morning? A. I was putting sand and water on the deck.

Q. Did you have anything to do with the orders to the men, in the capacity of boatswain or other-

wise? A. No, I was charged with doing the wash- 2167
ing there under the orders of the boatswain.

Q. How was the weather when you went on duty? A. There was fog; not as heavy as it was a little later.

Q. As near as you can remember, how soon after you went on duty did the thick fog set in? A. Three-quarters of an hour after it got to be very thick, and it was wet fog, to wet everything.

Q. Do you know if any change was made in the lookout after the thick fog came on; if so, state what it was? A. Yes; another man was sent on lookout; there were two forward and one in the crow's nest, aloft. 2168

Q. As far as you can remember, when was that done? A. I can't say exactly; I think five o'clock had struck when the second man was sent. When I say two I mean the third man, because there were two down forward and one up aloft.

Q. How long before the collision was this done? A. The collision took place about 5.20; and about five o'clock this third man was sent on lookout.

Q. Was the siren of the *Bourgogne* being sounded after the fog set in? A. Yes; always; all the time; every minute.

Q. Do you know anything about the speed of the *Bourgogne?* A. No; we don't go up on the bridge. 2169

Q. Where were you when you became aware of the presence of the *Cromartyshire?* A. I was opposite hold No. 2 on the military deck; I had come down from the spar deck and was on the military deck; it is the deck under the spar deck. It is the upper deck; one of the decks of the hull of the ship; the upper deck of the hull of the ship.

Q. On which side were you? A. The starboard side; on the side upon which she was run into.

Q. What first attracted your attention to the *Cromartyshire?* A. The butcher and I were to-

2170 gether there; and the butcher said, "There is a ship right alongside"; he called my attention to it and grabbed me by my shirt, and hauled me back, and threw me down.

Q. Did you see the *Cromartyshire* before the collision? A. No, I only saw her when her bowsprit was already right over us; when I saw her her bowsprit was right up in the air right over me.

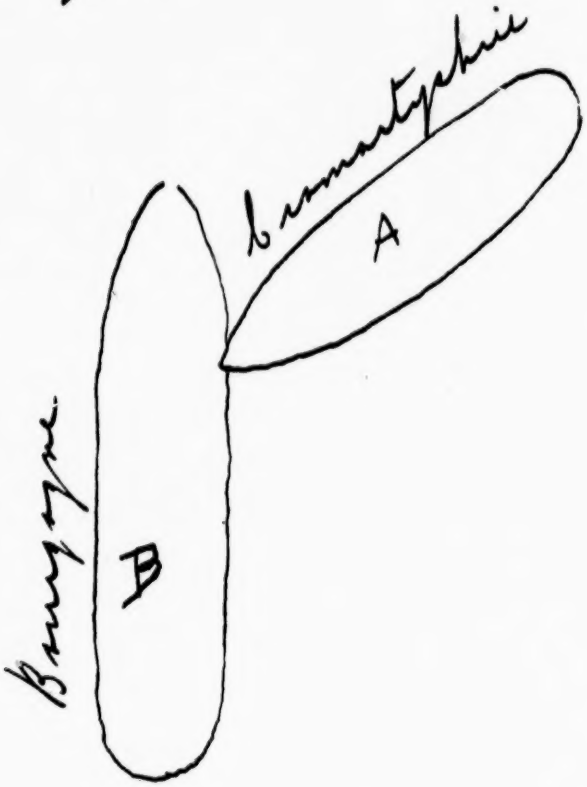
Q. Did you hear any horn or other sound from the *Cromartyshire?* A. No, nothing; absolutely nothing. The first I saw of her was when her bowsprit was right up over me.

Q. Take these two models and place them in the
2171 positions of the two vessels when the collision took place, supposing "B," the larger model, to be the *Bourgogne,* and "A" the *Cromartyshire.* A. Like that (indicating).

The diagram made by witness is marked Petitioner's Exhibit 27 of this date.

2172

Pierce Grace



Petitioners Exhibit 27

Oct 30/01

Q. Did you see whether the *Cromartyshire* had 2173
her sails set? A. Yes, she had; when I got on board of her I found her main royal was furled; the mast had fallen; her royal mast had fallen; had been carried away at the cap.

Q. I am now asking you what sails, if you observed, the *Cromartyshire* had set at the time of the collision? A. She had everything set except this main royal.

Q. Have you any idea what headway she was making? A. I can't say exactly, up under the foresail, with a light breeze, such as it was; I should think about three or four knots; I can't say exactly. 2174

Q. What injury did the *Cromartyshire* do to the *Bourgogne?* Describe it in your own way, as far as you saw it. A. I know that at the first point of contact she cut the lifeboats over the officers' quarters in two; and her bowsprit struck against the little tower where the side lights of the *Bourgogne* were; she smashed the whaleboat, which fell down on the spar deck; my idea is that her anchor caught into the side of the ship and tore the plates away, and being yanked in by her anchor, which was caught there, drawn in, she came again and cut the hull of the *Bourgogne;* that is about all I saw.

Q. Did you notice the extent of the injuries fore 2175
and aft, about how long the break in the side was? A. I looked overboard after the collision, and I saw that there was a tear in the side of the ship, but I can't tell you the length of it. I saw the water which was backed up against this broken plate.

Q. After the collision what did you do? A. I assisted the watch in getting out the whaleboat.

Q. Which one? A. No. 2 on the port side.

Q. What did you do in that way? A. We put men into her and got her into the water right away;

2176 there are six men in her. I wasn't one of the men; I remained on deck; I helped lower her away.

Q. Did any passengers get into that boat? A. No, only sailors belonging to the ship. They were intending to go around the ship and see what injury had been done to her.

Q. Did they actually go around? A. No, they couldn't get around the ship, because the headway that she had on carried her by them.

Q. Did you afterwards see that lifeboat? A. Yes; she came back to the *Bourgogne* after that; after the ship had taken her list.

Q. About how long was that? A. About twenty
2177 minutes; not long after.

Q. On which side of the *Bourgogne* did this lifeboat come? A. She stayed on the port side, on the port side aft.

Q. Did you do anything about getting out any other lifeboat? A. Yes, we got all the lifeboats off from their chocks on the port side.

Q. Go on and tell what you did about getting the lifeboats out? A. They were all full of people; after getting all the lifeboats out from their chocks and ready to swing out I went to my own lifeboat, No. 8; which is on the port side. When I got there the order was given "Everybody to his
2178 boat," and as that was my boat I remained there, and we tried to get her out; and we got her stern outside of the ship a little, say half of the boat out; we were perhaps a hundred and fifty people trying to get her out there. The *Bourgogne* took a heavy list and stayed so. The boat swung back in again, and she swung in so that she almost touched the top, where the upper part of the house is, and we couldn't get her out again—where the chimney is, where the funnel is, and we couldn't get her out again.

Q. Was that true of all the other boats on the

port side? A. Yes; there was no way of getting 2179
them out; it was impossible; they swung right in again.

Q. What was done with the lifeboats on the starboard side? A. After that I went up to see about the rafts which were made fast along up above.

Q. What did you do then? A. I saw that there was an engineer who was casting off the lashings; then there was the carpenter and another seaman named Festou; they were in boat No. 9; they called out, "Pierres, come and give us help here." I went down where they were to boat No. 9. We three were the only ones that belonged to the ship that were in that boat No. 9; we got the boat into the 2180
water, when the water was already up on deck; then we got a little way away from the ship and remained there, and we took fourteen people off from a raft which had been injured; and the boatswain was on the raft, from which we took the fourteen, and he took command of the boat with me. We remained there on the spot until the fog disappeared. We could see the *Cromartyshire* way off at a great distance, her topgallant sail, and we steered to her. We were fifty-seven people in the boat. She was loaded. That is all.

Q. Where was this boat that you last spoke of as having succeeded in getting out, on which side of 2181
the ship? A. The starboard side, the side towards which the ship was listed.

Q. Did you see any other boat go out on the starbaord side? A. Yes, there was an Austrian crew that we had on board. They took the after boat which was way at the after end of the ship.

Q. You don't mean that they were part of the crew of the *Bourgogne?* A. No; it was a crew that were going with us as passengers.

Q. Did you see anything else that they did with the boat besides taking it, as you have described?

2182 A. They stayed in her and got under way, and took no other persons on board. There was a waiter named Angele; they took this boat and got away and got on board the *Cromartyshire.*

Q. Did you see any other boats go out on the starboard side? A. No. That is all.

Q. Did you see how many boats there were that had been injured by the collision, or otherwise? A. There were three; I saw three.

Q. You have already spoken of one having been crushed in the collision. Now, how were the others injured, if you know? A. The *Cromartyshire* smashed the first boat, which was on top of the of-
2183 ficers' quarters, and then she smashed the whaleboat astern and then she came back and smashed the third boat, which was just abaft of the whaleboat. I have knowledge of those three.

Q. Do you know anything about an accident happening to one of the lifeboats in consequence of the falling of the funnel of the *Bourgogne?* A. No, I didn't have knowledge of that.

Q. Do you know whether one or more of the *Bourgogne's* funnels fell after the collision? A. I heard so, but I didn't see it. I have no knowledge whatever of that; I don't want to say what isn't true.

2184 Q. What efforts did you and your fellows in the boat make in the direction of saving passengers? A. They were all inside when we pushed off from the ship; she was full of passengers when she was cast loose from the davits. She swung out clear and I had to climb down by the davits to get into her.

Q. Did you see the *Bourgogne* sink? A. Yes; we were near enough to touch her when she went down. When the after end of the ship went down she threw a sort of a swell towards us; that pushed us further away; otherwise we would have gone down with her.

Q. You spoke of the tower carrying the starboard 2185
light having been broken. Did you observe whether the lights were burning before the collision? A. I was working; I couldn't tell. I was on the after side of the tower. There are people whose business it was to look after that; it wasn't mine. It must have broken the tower there. I didn't stay there to see.

Q. What lifeboat drills did you and your fellows go through at Havre and at sea and in New York on the last voyage out and at any time before the collision? A. Before our last departure from Havre the boats were got out and put into the dock there and tried under sail and with oars in order to 2186
see whether they went all right. Each man had his life-belt on. Every day on the passage from Havre to New York two boats were examined; their chocks knocked down, everybody took his station; the boats were not put into the water, their davits were turned out. Almost every day there is somebody looking after those parts of the boats.

Q. You say every day two of the boats were taken out; were they the same boats every day? A. Every day two other boats; not the same two.

Q. State whether or not during the voyage all the boats went through this drill? A. Yes, on the return voyage they still kept it up. And here at 2187
New York boats are hung outside of the ship, their davits turned out.

Q. Are they also released from their chocks on the deck? A. Yes, the boats are swung out.

Q. And this was done on this last voyage of the *Bourgogne;* you are sure of that, are you? A. Yes, on a Thursday, on the first voyage that we came from St. Nazaire to New York, the Commission came on board and inspected the ship because we just had been undergoing repairs and the first voyage this Commission came on board.

2188 Q. How long was this before the voyage upon which the *Bourgogne* was lost? A. The Commission came on board on the first voyage after we left St. Lazaire, and the ship was lost on our third voyage.

Q. That in point of time was about three months? A. Yes; each voyage lasts about twenty-eight days.

CROSS-EXAMINATION BY MR. BENEDICT:

Q. How long had you been in the service of the company at the time of the collision? A. Some twelve years; ten or twelve years.

Q. In what capacity? A. I was sail-maker.

2189 Q. Have you been in the employ since the collision? A. Yes, sir; I made four voyages on the *Champagne* and four on the *Gascogne* and two on board the *Canada* to Colon, and at present I am boatswain on board the *Ville du Havre*.

Q. When did you arrive here? A. I came in on the *Champagne* on her last voyage last Sunday.

Q. That would be the 27th, would it? A. Yes.

Q. What were you on the *Bourgogne* at the time of the collision? A. I was sail-maker.

Q. Did the sail-maker usually take part in washing the decks? A. Yes, every other day.

Q. Which watch did you belong to? A. The
2190 port watch.

Q. You say you came out on deck at what time on the morning of the collision? A. Four o'clock.

Q. Who else turned out with you? A. All the watch.

Q. Can you give me the names of any of them? A. No, I couldn't. I worked with both watches. I can't remember. Every voyage we would change the men.

Q. Can't you give the name of any one of the watch to which you belonged? A. No, no; really

I can't, because during the day I had absolutely 2191
nothing to do with the other members of the crew.

Q. Were your duties different during the day from what they were at night? A. Yes, I was sewing; working on the sails after eight o'clock.

Q. After eight o'clock in the morning? A. Yes, until three or four o'clock in the afternoon.

Q. Who gave you the order to turn out in the morning with the watch? A. That was part of my service to attend to the washing of the deck; that I did every day.

Q. Did you have charge of the work that morning? A. Yes, every other day I did; I did that morning. 2192

Q. Then the boatswain did not have charge of it? A. Yes, he was there; he had charge of it, but I was the one that had the hose and worked around. I had on my washing apron.

Q. Who was it that had the general command of the work; you or the boatswain? A. The boatswain. I saw that the work was done according to the orders that he gave me.

Q. Do you know the name of the boatswain? A. Petiot.

Q. Do you know the name of anybody that was in the other watch? A. I recollect those who were on lookout because they came from the same part 2193
of the country I did.

Q. Give me their names? A. Well, there was Le Breton.

Q. His first name? A. I don't know. I know the ones that I am trying to think of, but their names have gone out of my head.

Q. When you came on deck at four o'clock where did you go? A. I took some sand that was there and I went up on the upper deck and commenced working on the deck.

2194 Q. Which side of the deck? A. The starboard side.

Q. Whereabouts fore and aft? A. Right opposite the saloon. That was where we began and we worked aft.

Q. Was that forward of the bridge? A. Yes, it is under the after side of the bridge, opposite the skylight of the saloon.

Q. How far aft did you get the washing done? A. As far as the passage of the second-class passengers.

Q. How many meters is that? A. Twenty to twenty-five meters.

2195 Q. Do you say that you were washing the decks, you yourself were washing? A. I was putting sand and water on the deck to wet it. I had a bucket and was putting water on it, and the men were working, scouring it with holystone.

Q. How many men were engaged in that work? A. Nine or ten; I don't remember exactly.

Q. When you came on deck did you hear any orders given by anybody? A. No.

Q. After you came on deck until you left the deck, as you say, did you during that time hear any orders given by anybody? A. No.

Q. Did you hear the siren while you were on deck? A. Yes, our siren was blowing all the time.

2196 Q. Was it blowing when you came on deck? A. Yes, at the time that I went on the watch it was going.

Q. And blew all the while from that time until the collision? A. It blew up to the time that the ship disappeared in the water; it was blowing slower and slower and slower and more softly until the ship disappeared; just as long as there was any steam pressure on.

Q. Before the collision, from the time you came on deck until the collision, was the siren blowing

all the while? A. Yes, until the ship disappeared. 2197

Q. Did you any time especially look to see the lookout? A. Yes, when I went forward to get my brushes and things I looked forward and saw two men on the forecastle, and I saw the man up aloft.

Q. That was when you went to get your brushes to begin your work? A. Yes, at six o'clock we commenced washing; they holystoned first.

Q. When you went to get your brushes was at four o'clock—wasn't it? A. When I went down to get my brushes I saw them, which was just the moment when the *Cromartyshire* appeared; it was when I went down to get my brushes from the upper deck and it was at the same time that the collision 2198 occured.

Q. What made you look at that time to see the lookouts? A. In looking to see what the weather is you naturally look forward, and that was when I saw them.

Q. How near to the rail were you when the butcher caught hold of you, as you say? A. From where I am sitting now to the wall, about three meters.

Q. Isn't there a covering to that deck which goes out to the side of the ship, the covering of the deck above, doesn't that go out to the side of the ship; an awning or covering or something? A. 2199 No, it is the approach to hatch No. 2 there and there is no covering, no roof.

Q. How far distant were you at the time when the butcher caught hold of you from the place where you had come down from the upper deck? A. Some fifteen meters from the ladder, forward of the ladder.

Q. You say that you at that time saw the men on the lookout; had you seen the lookouts before that time? A. Yes, when I came down the ladder was the first time that I had noticed them. I even

made a reflection at the time that it ain't very nice weather to be on lookout.

Q. When the collision came where did the *Cromartyshire* strike; forward of you or aft? A. Forward of where I was. I was aft of the place where she struck. She struck forward of where I was.

Q. Did you see her as the *Bourgogne* went entirely by her; did you look at her? A. Yes; when I heard everything crack I got up on my feet again and looked at her.

Q. And stayed right there? A. Yes, and as soon as the shock was over I looked outside, but the hull of the *Bourgogne* was not hurt at the place where that first boat was smashed. The other ship had smashed the boat, but hadn't touched the hull at that spot.

Q. After the vessels got separated did you get any orders from anybody? A. The second captain gave the boatswain orders for everybody to get the boats ready.

Q. How long was that order given after the collision? A. As soon as we got out the whaleboat we were told to get all the other boats out; it might have taken ten minutes.

Q. Before the order? A. Yes, at once upon the collision and as soon as we got the whaleboat out; that is to say, possibly ten minutes after the second captain gave the order to get all the boats ready.

Q. Did you hear any other order given while you were on board except that? A. No, I didn't hear any other order.

Q. When you got up, as you say, where did you go? A. I went over and helped get out the whaleboat on the port side. That was the first thing I did.

Q. When you got to that boat did you find anybody there? A. Yes, the watch that was on service was there and casting the boat loose. The whale-

boat was already cast loose and they were turning 2203
the davits out, swinging her out, and then we were told to put six men in . her.

Q. Who told you? A. The second captain gave that order. I heard the captain tell the second officer and he repeated the order. As soon as the whaleboat was out I went into the galley to get some bread to put into the boats.

Q. Was there any officer that got into the boat with the six men? A. No, they were all seamen.

Q. And those six men, as I understand, cast off the boat from the ship and began to row? A. Yes.

Q. And the *Bourgogne*, as I understand, was going ahead? A. Yes, a little. 2204

Q. That was about ten minutes after the collision? A. She stopped to get the whaleboat out.

Q. And then started ahead again? A. Yes.

Q. Did you hear anything about the vessels going towards Sable Island? A. Yes, I heard it said by nobody especially, but it was said there that the captain wanted to go and try to get to Sable Island.

Q. And the vessel was going, as you understood it, for that purpose? A. I heard people say so; I didn't hear it from the captain or from any of the officers.

Q. But you knew the vessel was in motion? A. Yes. 2205

Q. After the whaleboat was cast off you say you went to the galley to get some bread; did you get the bread? A. The boat was on a level with the rail then.

Q. Did you come back there with your bread before she got in the water? A. The galley was shut up and I couldn't get any bread, but I went back.

Q. It was after you came back that the boat was put in the water and the men began to row? A. Yes.

Q. After the boat was cast off in that way where

2206 did you go then after the men began to row? A. I lent a hand to get all the port boats out; that is, to lif the boats off from their chocks.

Q. Which first; give them in order? A. No. 4 was the next one; after that No. 6 and No. 8.

Q. Were any of them got out? A. No, they were hoisted up on the blocks off from their chocks, but they couldn't be got out.

Q. How long do you think you worked at those three boats? A. As long as we could stand up on deck. I couldn't tell you exactly.

Q. Can you tell how long you worked at any one of them? A. I worked at least a quarter of an
2207 hour trying to get my boat No. 8 out. We got her half swung out, and then she swung back in again.

Q. And that was the time that the *Bourgogne* took the list? A. Yes, she took a sudden heavy list, a death blow.

Q. That was while you were working at No. 8, I understand you? A. Yes.

Q. Did you work at any boat on the port side after that? A. No, not on that side.

Q. So you went from there and went to the rafts, as I understand it? A. Yes; one of the engineers was casting it loose when I got there.

Q. And you went from the whaleboat to No. 8, as
2208 I understand? A. I beg pardon; before that I lent a hand to hoist the others.

Q. Which others? A. No. 6, which was forward of my own. I gave a hand to hoist her up off her chocks and to help turn her davits. After leaving the whaleboat I helped at No. 6 and No. 8.

Q. Was the whaleboat one of the numbered boats? I. I think it was No. 4; there was a boat forward of her.

Q. Did you see anything that was done with boat No. 10? A. No; that one was way aft.

Q. Had you seen anything done with No. 2? A. 2209
No, I don't know anything about No. 2.

Q. When you went to the raft who do you say you found there? A. The engineer who was cutting the lashings.

Q. Do you know his name? A. I think it was Mr. Laisné, but I am not sure; but it was certainly an engineer.

Q. And you and he were the only ones that were at the rafts? A. Yes, he was working there and I went away over on the other side.

Q. And you left him there? A. Yes.

Q. Was there any one with him when you left? A. No, he was alone. 2210

Q. And you went then, as I understand you, to No. 9? A. Yes, the carpenter called me to give them a hand.

Q. No. 9 was the boat that was furthest aft on the starboard side, was it not? A. No, that was No. 11, the one that the Austrians took. That was further aft than she was.

Q. When you went to No. 9 was there anybody there except the carpenter and Festou? A. Yes, there were passengers.

Q. Were there any other of the crew of the *Bourgogne?* A. No.

Q. Do you know the carpenter's name? A. Jean 2211
Mabule.

Q. Was he saved? A. Yes, he is in Havre. I saw him the day that I came away on the *Champagne.*

Q. You said that the Austrians took the stern boat. Did they get away with that boat before you got out No. 9 or after? A. They lowered it away just the same time we did our boat.

Q. Did you see anybody at work at No. 7? A. There were people there, but I don't know who was there; a good many passengers.

2212 Q. Did you see whether No. 7 was got out? A. No, I can't tell, because I was busy with my own boat there.

Q. Did you have to go by No. 7 in going from the raft to No. 9? A. No, the raft was aft on the ship and No. 7 was further forward.

Q. Did you see what was done with No. 5? A. That was damaged.

Q. How? A. It was just aft of the whaleboat and that was where the *Cromartyshire* struck.

G. That was damaged by the *Cromartyshire* then? A. Yes.

Q. And the whaleboat was also damaged by the
2213 *Cromartyshire?* A. Yes.

Q. And No. 1, was that damaged also? A. Yes; she was the first one that was struck. She was cut in two and fell on board.

Q. How far forward of No. 9 was No. 7? A. It was not far. The length of one of the boats, may be twenty meters, and I am not sure it was as far as that.

Q. And yet can't you tell us at all what happened at No. 7? A. No, I can't; I was busy at the boat where I was I can't say a thing about it.

Q. As soon as No. 9 was got in the water did the *Bourgogne* sink? A. Not right away; probably
2214 five or six minutes after. Her stern went down right away; her stern was under water right away, but the ship didn't go down until five or six minutes after.

Q. So that you hadn't time to row away at all from the *Bourgogne* until she sank, is that so? A. No, we had those passengers and we couldn't make them row; they didn't know how to row.

Q. Did you try to row? A. I took the tiller and I kept the boat head up to the sea.

Q. Were there any other sailors in the boat but

you? A. Yes, the carpenter and Festou; there was 2215
one forward and I was aft.

Q. Did none of them try to row? A. Yes, they did after, but we had to get the oars out and get the things straightened out in the boat, and the passengers got the oars and instead of rowing ahead they backed the boat.

Q. You were at the stern? A. Yes.

Q. Looking forward? A. Yes; I shipped the tiller so it held the boat up head to the sea.

Q. And you were looking forward? A. Yes.

Q. Did you see anything of boat No. 7? A. No; I can't give you any information whatever about it.

Q. How long do you think it was from the time 2216
of the collision until the *Bourgogne* sank? A. About forty minutes; I can't say exactly, but that is my opinio

Q. Did you go to take any raft in tow at any time? A. No, not at that time.

Q. At any time? A. I took fourteen people off from a raft after the *Bourgogne* went down; a raft which had been broken in. After that we landed the people that we had and we were fifty-seven.

Q. So that when you left the *Bourgogne* you had only forty-three in the boat? A. Yes, when we got clear of the davits; these people were all in there when we lowered the boat away.

2217

Q. Do you know anybody that was in the boat beside the carpenter and Festou; the names of anybody? A. No, they were passengers. I took an engineer off from the raft after.

Q. What engineer? A. The one who is here present.

Q. What is his name? A. Mr. Le Bourch.

Q. Have you been in Dunkirk this summer? A. Yes, sir; I came from there now.

Q. Were you examined in the English Court? A. No.

2218 Q. Did you go to England at that time? A. No.

Q. Were you examined before Commander Aubert at Havre? A. I don't know what his name was. I was questioned by the Marine Department there.

Q. Have you ever been questioned by anybody else but him about the facts of the case? A. No.

Q. Never been questioned by anybody in this office? A. No, I have never been here.

Q. Have you never been in this office before today? A. No.

Q. And nobody has asked you anything about the collision since you arrived in this port? A. No.

2219

REDIRECT-EXAMINATION BY MR. JONES:

Q. You say that the siren of the *Bourgogne* was going all the time during the fog; do you mean that there was no intermission in the sound of the siren? A. Every minute.

Q. You said in answer to a question of Mr. Benedict "Yes" to a statement that you thought there was a sudden list of the *Bourgogne;* what do you mean by that? A. Yes, she took a death roll.

Q. Had she been listing before that? A. Yes, a great deal at that time; she had already listed a great deal.

2220 Q. How soon after the collision did you notice this list? A. Perhaps ten minutes after. I am not even sure that it was ten minutes she took a list.

Q. Was this sudden or a gradual movement? A. It was a list that the ship took increasing, an increasing list.

Q. Are you in the service of the Compagnie Transatlantique now? A. No, I am in another company, the Havre & Peninsular Line.

Q. I believe that you said that you belonged to the ship *Ville du Havre;* does she belong to that

line? A. Yes; I belong to that ship. I came out 2221
of her for the purpose of coming here.

Q. How long all together have you been a mariner? A. Since 1871, thirty years.

Q. In what different capacities have you been employed? A. I commenced as a boy, then I was an apprentice, and then seaman. I call the sail-maker a seaman. That is a title that is given to us on board. At present I am boatswain.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You say that the whaleboat on the port side was actually got out? A. Yes, but the ship didn't have any list at that time; that was at once; right 2222
away after the collision.

Q. And that, you think, took about ten minutes? A. Yes.

Q. And you say when you went to No. 8 you were able to get the stern of the boat out, notwithstanding any list? A. A little, yes; but with the roll that she gave there the boat came back upon us and we couldn't do a thing with her after that.

EMIL LE BOURCH, being duly sworn and examined, through the interpreter, on behalf of the petitioner, testifies:

2223

By Mr. Jones:

Q. Where do you live? A. In Havre.

Q. What is your occupation? A. I am engineer; chief of the watch.

Q. Of what ship? A. The *St. Simon;* I just left her.

Q. What position did you hold on the *Bourgogne?* A. First assistant engineer.

Q. Who were your superiors in the engine room? A. Mr. Dalidot, chief engineer, and Mr. Brissac, who was the chief of my watch; he was first-class

2224 engineer. There were others, but I didn't have to do anything with them; three engineers and three apprentices.

Q. Were you on duty at the time of the collision? A. No, I was to go on watch at six o'clock; I was asleep at the time of the collision.

Q. Do you mean to say you were asleep, or were you merely in bed? A. I was asleep in my berth in my room.

Q. What first attracted your attention to the collision? A. The shock woke me up; as my room was on the starboard side the debris fell down over my room and woke me up.

2225 Q. What did you do then? A. My first fireman came and notified me that there had been a collision; and when I came out of my room Mr. Brissac told me to go and get the pump in hold No. 2 at work. I couldn't get into that hold because the water-tight door was closed, and we came back; we couldn't get through on the starboard side because the bridge had fallen on deck at that time, so we went around on the port side, at the time that Mr. Rempler, the second lieutenant, was trying to get boat No. 2 into the water. The ship had a list at that time, and this boat capsized against the hull of the *Bourgogne;* there were some forty-odd passengers in her.

2226 Q. Did you go into the engine room after the collision? A. Our rooms are right against the engine room, and coming out of my room I went into the engine room.

Q. Did you notice whether the engines were in motion then? A. Yes; it was going; it had been stopped at the moment of the collision, and had been set going again after.

Q. At about what speed was it then going? A. I can't tell you the speed. I should think perhaps five knots; it might have been making forty revolu-

tions; the captain inquired through the cadet, whom 2227
he sent down into the engine room, of the chief engineer, as to whether he could keep the engine going, and the chief engineer replied that it wouldn't keep going a great while.

Q. Do you know anything about the pressure of steam which was then on? A. When I got in the engine room there were seven kilos; generally we had ten kilos and a half pressure on the boilers when we were under way.

Q. How many revolutions would seven kilos give to the engine, if turned on full? A. Her general number of turns was sixty-four, and with seven kilos from forty to forty-five. The water-tight bulkheads 2228
were closed up and the doors of the fire-boxes were closed, and the pressure was going down itself, and as matter of fact the engine stopped itself. The chief engineer finally whistled and said "Let everybody save himself," and he got out.

Q. How long after the shock of the collision was it that you went into the engine room and noticed that there was seven kilos pressure? A. Not all together ten minutes; say eight minutes. I had time to go forward and come back, and the engine kept going probably ten minutes after that; that is to say, that it stopped about a quarter of an hour after the collision. At that time the water was 2229
coming into the engine room. The anchor had caught and torn a hole in the plating and had torn off the plating for a length of thirty or thirty-five meters; and the water had got in through there and through the port holes and the ship took a list, and then, when the water got up as high as the deck, why, away she went.

Q. Did you have anything to do with the closing of the bulkhead doors? A. No, but the chief of my watch had charge of the closing of the water-tight bulkheads.

2230 Q. Did you see them closed? A. Yes, I am certain of it; in the passageways it is the steward who takes charge of those.

Q. That is up on the saloon deck? A. No; there were passageways where there are cabins; all those passageways are closed with water-tight doors. There were twelve water-tight compartments.

Q. What became of Mr. Dalidot, the chief engineer? A. After he told everybody to save themselves he disappeared. It was said that Mr. Dalidot and the fourth engineer went up together out of the engine room; it is not known what became of them after.

2231 Q. They were not among the saved? A. No; it was thought that he got caught in a winch as he was going across the deck.

Q. What became of Mr. Brissac? A. He went forward with me to that pump, and came back with me into the engine room, and after that nobody knows what became of him; it may be that he went back to the pump again.

Q. He was not saved? A. No.

Q. Were any of the engineers on duty saved? A. No officers; no. All lost. The apprentice there remained at the pump in the engine room, and the chief of the watch remained with him.

2232 Q. Neither of them were saved? A. No; Haglon died down in the hold; in arranging the pump there the floor raised up and fell on him.

Q. How did you manage to save yourself? A. I went up from the engine room and at the time that I got up on deck the water was coming into the door on the starboard side; over the deck. I met Mr. Laisné and Mr. Deprez, both of them, and we got up over the cylinders, climbed up over the cylinders, and there we caught the skylight and got up on the spar deck at the place where the rafts are. Mr. Deprez—he is an electrician and he always carries

a knife—he had it with him, and we cut loose the 2233
four rafts, and two planks which were there, and then we commenced getting the rafts overboard; the two starboard ones, which were behind the skylight, we were able to get overboard; but we couldn't get those on the port side over, because the ship had too much list. I then jumped overboard and got hold of one of the rafts, the one that had been broken in. We were about twelve there. Mr. Deprez and Mr. Laisné got on to another raft; there were about fourteen people together on that one. At about that time the ship had taken such a list that one of the funnels fell and demolished boat No. 7. The back stay of the funnel carried away 2234
and it fell on the boat, and there were some eighty people in it. There was the first lieutenant, Mr. Pichard; he was killed in it, and when we got away from the ship she went down. The ship laid over on one side and then she stood upright and went down by the stern. About a quarter of an hour after that, or so, boat No. 9 came to us. Our raft had fallen on to one of the davits and had broken in one of the compartments. We got into boat No. 9 and left the raft afloat, but it saved other people afterwards. After the fog cleared up we saw the *Cromartyshire* four or five miles off, and we got aboard of her.

2235
Q. Who, besides yourself, were on the raft? A. The boatswain, Petiot, and several oilers and firemen; there was one oiler whose name was Helin; there was the first fireman, Prudhomme; and there was a coal-heaver, Nicolas; then there were three or four passengers; I don't recollect just how many. We were twelve altogether; and then we got on board of the *Cromartyshire* at half past eight in the morning.

Q. Was there a passenger named Liébré on the raft with you? A. No.

2236 CROSS-EXAMINED BY MR. BENEDICT:

Q. You didn't know there had been a collision until the first fireman came and told you? A. No; I thought it was ice; we had seen ice on the night before; it was the noise that woke me up.

Q. Where did the first fireman come from? A. From the first firemen's quarters, which are on the port side of the engine room; all the first watch are waked up at five o'clock; that is according to the rules of the ship, in order that they should have time to eat and be ready to take the watch at six o'clock.

Q. What was this first fireman's name? A. Raoul; he was lost.

2237 Q. Do you know where he was at the time of the collision, before he came and waked you up? A. No, I don't know; he must have been in the firemen's quarters.

Q. How far is it from your room to the firemen's quarters? A. You have only got to cross the engine room; six or seven meters.

Q. You hadn't turned out before he told you there was a collision? A. No; I was sleeping well.

Q. Did you get up immediately? A. Yes; right away.

Q. Did you dress yourself? A. No; I kept on my night-shirt and put on a pair of pantaloons and

2238 kept on my sabots (wooden shoes). I made a present of them to the shoemaker in Halifax; he kept them as a souvenir; he sold us some shoes there.

Q. When you came out of your room did you come out into the engine room? A. No; I went to the pump forward.

Q. Before you went in the engine room? A. Yes.

Q. You said that Mr. Brissac told you to go forward? A. Yes.

Q. Where were you when Brissac gave you that order? A. Our rooms are one right alongside of

the other, and coming out he gave me this order; 2239
his room is right alongside of mine.

Q. How far forward did you go with that order? A. When I saw that the bridge had been smashed down and that I couldn't get by that, I went up on the grating; I went down through a grating through the fire-room, and went forward; at least eighty meters the distance was.

Q. Then when you first got that order you went up on deck? A. Our rooms are on the deck.

Q. Didn't you just say that your room opened into the engine room? A. The door, yes, opens into the engine room; but we had only got to open a door there to be on deck also. 2240

Q. Does the door of your room open towards the outside of the ship, or towards the engine room in the inside? A. Inside.

Q. Didn't you have to go out from that place where the door opens into, in order to go forward? A. Yes, we go into the engine room and go out through another door.

Q. On which deck does that bring you out? A. On the main deck.

Q. On which side was it that you went out? A. On the starboard side; that side was stopped by the bridge which had fallen down there.

Q. When you got out on to the deck how far aft 2241
of the bridge is that door that you went out of? A. Thirty-five meters.

Q. And you went forward to the bridge before you found it was broken down so that you couldn't get by? A. No; the bridge had fallen down on deck. The bridge is held up on supports and the end had fallen down on the deck.

Q. How far forward from the door did you go before you found that you couldn't get by on that side? A. Some fifteen meters; I saw that it was stopped up there.

2242 Q. Where did you have to go to get across on the other side? A. There is a passageway there, belonging to the fire-room; there is a grating which is there to ventilate the fire-room; I passed through there.

Q. From that grating how far forward did you go? A. It is way forward; it is all together at the forward part of the ship; some sixty meters, you go down on the forecastle.

Q. You went on the forecastle, and from there went down below, did you? A. I didn't go up on the forecastle; but from the deck under the forecastle I went down below; I went down through a
2243 hatch there into the between decks; down on the second deck there is a water-tight door to the bulkhead, and it was closed and we couldn't get in.

Q. Between what parts of the ship was that bulkhead? A. There is the fore peak and then there is the store-room; it is the third or fourth bulkhead from forward.

Q. Did anybody go forward with you, or did you go alone? A. Mr. Brissac and myself; he was the chief of our watch.

Q. When you found that you couldn't get into No. 2 what did you do then? A. We went back to the engine room then.

2244 Q. Did you go down to the floor of the engine room, where Dalidot was standing? A. Yes; he was at the starting bar, and he gave me orders about doing the work. I did some different things under his orders in the engine room. I changed the suction pipes and one thing and another.

Q. Up to that time had you heard any orders given by anybody except this order from Brissac to go to No. 2? A. No; in the engine room we wouldn't hear any orders anyway.

Q. When you got into the engine room who did you find there already? A. There was the chief of

the watch, Mr. Gautier, the chief engineer, who was 2245
at the starting bar; he had been wounded in his head; there was Dalidot, there was Mr. Haglon was at the pump aft; Mr. Laisné, who had been looking at the small boilers to see whether the fires were lighted under them; Mr. Deprez and his bunkerman, his coal-heavers, who were attending to his electric machines, with the coal-heaver that belonged to the watch. Then there were two oilers and a man also who looked after the cranks.

Q. Do you know the names of the oilers? A. There was one called Duaux, who got killed while he was trying to start one of the donkey engines, and then Matelaine, who was drowned; the one that 2246
looked after the cranks was drowned; I don't recollect his name. There was an assistant electice electrician; I don't know his name. That is all.

Q. Did Brissac come back into the engine room with you? A. No, I didn't see him.

Q. You didn't see him any more after he went forward? A. Yes; he came back to the door of the engine room, and I think that after that he must have gone back again forward; but I didn't see him after he came back to the door.

Q. When you came back to the engine room did you report to Dalidot? A. Yes.

Q. Did you get any order from Dalidot after 2247
that? A. Yes, he had me change the communications to the pumps. He had the suction changed from the engine room to the collector; there is a place where a lot of pipes come in and pour in water, and he had the suction put into that place, instead of into the engine room. The donkey engine was set pumping water out of the collector.

Q. Did he give you that order as soon as you came back to the engine room? A. Yes.

Q. Where did you have to go to perform that order? A. I dind't have to go out of the engine

2248 room; it is all right there; you only have to change the valve; instead of standing before the starting bar you pass around behind the condenser.

Q. Was that the only order that Dalidot gave you? A. Yes.

Q. Had you completed that order when he gave the order to everybody to save themselves (sauve qui peut)? A. Yes; he didn't give us the order to save ourselves for some five minutes after I had changed the communication. The engine had stopped already.

Q. What were you doing during those five minutes? A. I was standing there and waiting to see
2249 what would happen.

Q. When he gave the order to save yourselves what did you do? A. I went right up on deck; I tried to save myself.

Q. Did any one go up before you? A. Mr. Deprez and I went up together on the ladder, and I don't know what the rest did. Instead of going up the ladder we burned our fingers by going up over the cylinders. Those that didn't have that idea went up on the port side and got caught, and weren't able to get up.

Q. Did anybody get up out of the engine room except yourself and Deprez? A. Mr. Laisné also.

2250 Q. Were only you three able to get up? A. We were the only ones that were saved.

Q. You were the only ones that were in the engine room that were saved? A. Yes, sir.

Q. How long a time do you think it was from the collision till the sinking of the *Bourgogne?* A. Twenty-five minutes; twenty-five or thirty.

Q. How long a time after you got on deck was it that the vessel sank? A. I got up on deck probably five minutes after the collision, and she sunk probably twenty minutes after.

Q. But how long after you got on deck the last

time did she sink? A. We had time to cut the lash- 2251
ings of the four life rafts and get them over, and the ship sunk almost immediately; probably five minutes afterwards. Five or six or seven minutes after.

Q. How long do you think you were in the engine room after you came back to the engine room and made your report, before you got the order to "sauve qui peut"? A. Five or six minutes. The engine had stopped; there was no more steam pressure on; there was nothing more to do in the engine room; the fires had been put out by the water and there was no more steam pressure and there was nothing to do there. 2252

Q. Was there anything to take off the pressure until the fires were put out by the water? A. No; if the water hadn't come in we would have been able to keep up steam. One of the bunkers was broken in at the forward part and the water came in through there; it was the water which came in, and in rising put out the fires.

Q. And that, of itself, took off the pressure? A. Yes; that was the cause of the lack of steam, and the engine kept going slower and slower.

Q. And that was done before you got back into the engine room? A. Yes, just as soon as the shock took place the water commenced coming in. The 2253
list caused the ship to heel over and the water was coming in through this wound, and then a little later came in through the port holes.

REDIRECT-EXAMINATION BY MR. JONES:

Q. Did you have a man in the engine room by the name of Voisin? A. Yes, an electrician.

Q. Did you also have a man by the name of Calvary? A. Calvary also, yes; he had his legs injured in the boat upon which the funnel fell, No. 7; I think he was saved by a raft.

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2254 Q. Do you know whether Calvary was saved? A. Yes; he is here.

Q. What position did Calvary occupy? A. He was a fireman; he looked after the connecting rods too; he had charge of a small boiler I think.

Q. Did he have anything to do with oiling the engine? A. Yes, he looked after the connecting rods.

Q. As an oiler? A. No; he was a fireman, but he looked after those parts of the engine, and the small boiler.

Q. State whether or not Calvary had anything to do with the working of the engine, and if so what
2255 it was? A. I don't know whether he was on watch at that time or not; yes, he did.

Q. What did he have to do on the engine? A. He oiled; he examines the connecting rods, etc., to see whether they are heating; and in anchoring the ship there I think he had charge of a small boiler; a small engine.

Q. And in speaking of those that were saved from the engine room you forgot both of those men?

Mr. Benedict objects.

A. I don't know whether Calvary was in the engine room at that time; I am not sure; he is here,
2256 he can be asked whether he was there or not; I don't recollect whether he was on watch or not; if he was there he must have been on the third watch, from two to six.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You say that Calvary examined connecting rods. Did you see him at any time doing that work? A. No; that is what he did; he wasn't in my watch. There are watches of four hours and then you are eight hours doing nothing, and when you are off

watch you don't look to see what the others are doing. 2257

Q. Did you ever see Calvary doing anything on board the *Bourgogne?* A. Yes.

Q. What was he doing when you saw him? A. He did what I have explained to you.

Q. What did you see him do? A. He tried the connecting rods and greased and oiled. I think he was on watch at that time, but I am not sure about it.

Q. You were not on watch? A. No.

Q. And he was not then in your watch? A. No, I think he belonged to the third watch.

Q. If he was not in your watch how came it that you ever saw him do anything? A. Because we go below down there and we are not always in our room; we go down in the engine room sometimes. 2258

Q. When have you seen Calvary at work on the *Bourgogne?* A. I have seen him a good many times; I went below there from time to time; I was secretary of the chief engineer; I had a lot to do, I go down in any watch.

Q. My question was can you tell any time when you can swear that you saw Calvary at work? If so, tell it. A. I see him on board—he has been for the last two years with me on board the *St. Simon,* I see him working there all the time.

2259

Mr. Benedict moves to strike out the answer.

(Answer continued): I have seen him the same as I have seen everybody working.

Q. (Repeated.) Can you tell any time when you can swear that you saw Calvary at work? A. I have seen him—I don't think I did that day; I wasn't in his watch that day. I know he worked because he was a good workman. I have seen him for two years on board my ship, and if he hadn't attended to his business I would have known it.

Mr. Benedict moves to strike out the answer.

2260 Q. (Repeated.) Can you tell any time when you can swear that you saw Calvary at work? A. There are eighty-four firemen there—what do you mean by work?

Q. What do *you* mean by work? A. I say that—I have told you what his daily business was to do, and I suppose he did that on the day of the wreck.

Mr. Benedict moves to strike out the answer.

Q. How do you know what Calvary's business was to do when he was not in your watch? A. Because I tell you I was secretary of the chief engineer, and I recollect that that was what he was
2261 charged with; I had the list of all the men; I was the man who arranged the work of all the men, and I recollect that.

Q. Was he engaged in that work on the voyage from Havre to New York? A. Yes; he tried the connecting rods during the four hours, and when we were coming to anchor he had charge of two small boilers. He had charge of the small boilers; there are two that have charge of them; either one of them has twenty-four hours' service. One attends to it twenty-four hours, and the other is off during that time, and then they change about.

Q. When he was attending to this work of the
2562 boiler and this work of the connecting rods where was he; in the engine room or in the fire room, or where? A. In the engine room. He stayed there four hours. When we were at sea the small boilers were not used; it was only when we were anchoring. In the little boilers the fires were out at other times.

Q. Will you swear that you saw Calvary do any such work as that after the *Bourgogne* left New York, and if so when? A. No, I can't swear that I did, there was only a Sunday between and I can't swear that I saw him at work.

Q. Will you swear that after the *Bourgogne* left

New York on this voyage you ever saw Calvary at all, before the collision? A. No, I didn't see him after we left New York; I didn't see him, because he didn't belong to my watch. 2263

Q. Did you see him at all after the sinking of the *Bourgogne*? A. I saw him on board the *Cromartyshire*.

Adjourned.

NEW YORK, November 13, 1901.

Same appearances and under the same stipulation as heretofore noted. 2264

PIERRE VOISIN, being duly sworn and examined, through the interpreter, as a witness on behalf of the petitioner, testifies:

By Mr. Jones:

Q. What is your full Christian and surname? A. Pierre Voisin.

Q. Where do you live? A. In Havre; No. 6 Rue Dicquemard.

Q. Were you one of the crew of the *Bourgogne* when she was lost? A. Yes.

Q What was your position? A. Electrician. 2265

Q. Where were you stationed? A. At the electric machine.

Q. In the engine room? A. In the engine room.

Q. Were you on duty at the time of the collision between the *Bourgogne* and the *Cromartyshire?* A. Yes.

Q. Where were you at the time of the collision? A. In the engine room.

Q. What time did your watch begin? A. At two o'clock.

Q. What were you doing at the time of the colli-

2266 sion? A. I had just left my machine in the engine room and I had got up two or three steps on the ladder; I was going up to put out the lamps on the spar deck.

Q. Had you been in the engine room all the time from two o'clock up to the time of the collision? A. Yes.

Q. Do you know who were on duty in the engine room besides yourself? A. I only know by name Mr. Gautier, who was the chief of the watch. But there were other people there; there was another named Calvary also, I recollect; those two I knew; the others I don't recollect who they were.

2267 Q. What was Calvary doing? A. He attended to the connecting rods; he looked after the connecting rods; oiled them, etc.

Q. Do you know anything about the speed of the engines of the *Bourgogne* before the collision? A. No, I can't say; I didn't pay attention to that; we were going slowly judging from the speed of the connecting rods.

Q. You don't know what reduction of speed was actually effected before the collision, do you? A. I don't know; that isn't my business.

Q. What did you first know of the collision? A. When I got up two or three steps this gave me a

2268 little shock; I then went up on the deck and I saw pieces of a mast and sails; I saw people running around, and then I concluded we had been run into.

Q. What do you mean by having seen a piece of mast and sails? The mast and sails of another vessel? A. Yes; because we had no sails set.

Q. Did you see the sailing vessel? A. No.

Q. What was done on deck after you got up there, if anything? A. I can't say; I went back down below.

Q. Then what did you do? A. I went and notified Mr. Gautier what had occurred; he was along-

side of the pumps; I saw him coming up; and I said 2269
to him, "I think we are sinking." From there I went up into the firemen's quarters and tried to get my overcoat, but I couldn't get it; the water was almost up to my knees then. Water was coming in through the door of the storeroom into our quarters; the firemen's quarters. From there I went up on deck, just as I was; and I went to boat No. 7. She was the last boat that was got out. We used all our efforts; we got her into the water and pushed her off and at that moment the funnel fell down on our boat; we were ten or twelve men and the boat was loaded otherwise with women and children. As soon as the boat was crushed by the funnel I 2270
jumped overboard; I was taken in the suction that was created by this falling of the funnel, and I swam, trying to find a boat; and I discovered one capsized and got up on her keel. I hung on there as well as I could for about seven hours, and a boat from the *Bourgogne* came and took us off and put us on board of the *Cromartyshire*.

Q. Did you see what was being done towards lowering other lifeboats than the one that you got in? A. Yes; I saw that everybody was working, doing all they could, doing their best to get them out. One was running in one direction and another running in another direction, and pushing, and doing all 2271
they could.

Q. Do you know who had charge of the lowering of the lifeboats; what officer? A. I don't know; I only know that Mr. Pichard had charge of the boat in which I was; this was my first voyage and I hadn't had time to get acquainted with them all.

Q. Who was Mr. Pichard? A. A lieutenant.

Q. What became of him, if you know? A. He is dead; he was in the boat and the funnel fell on him and crushed him.

Q. Was he killed by that? A. I believe so, as

2272 well as all the rest who were in that boat; it was great luck my not being crushed the same as he was; there were very few saved out of that boat.

Q. Did you notice whether the *Bourgogne* took a list to one side or the other after the collision? A. Yes, I did; she took a very pronounced list.

CROSS-EXAMINED BY MR. BENEDICT:

Q. How long have you been here in the city? A. I arrived Saturday by the *Savoie*.

Q. When were you here before that, if ever? A. I went away from here on the *Bretagne*, the last voyage she made.

2273 Q. How long ago was that? A. Three weeks; about three weeks ago.

Q. Were you one of the crew of the *Bretagne?* A. No, I was not.

Q. Have you been attached to any vessel of the company, as part of the crew, within the last year? A. No.

Q. In what employ have you been in the last year? A. I am employed on copper work in the Mediterranean Docks in Havre.

Q. How long after this loss of the *Bourgogne* did you continue in the company's service? A. I made two voyages; I had been injured at the time of the 2274 wreck, and I remained six months in the hospital; I then made two voyages in their service.

Q. Is that all? A. One trip to Colon and one to Haiti; that is all; since that I have been on shore.

Q. Were you examined as a witness in the trial, in reference to the collision, in the English court? A. No; I was in the hospital.

Q. Have you been in the hospital more than once? A. Only once; I got the fever at Colon and went in the hospital on account of that after.

Q. In the hospital where? A. In Havre also.

Q. When was that that you were in the hospital

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the second time? A. It was about seven months 2275
after the collision; seven or eight months.

Q. How long were you in the hospital the second time? A. About a week; hardly a week.

Q. Were the two voyages that you say you made for the company before you went in the hospital the second time? A. No; the second time was when I made the trip on the *St. Lorent* to Colon; the second time I was in the hospital; it was my first voyage after the loss of the *Bourgogne* that I went in the *St. Lorent* and got the fever and went into the hospital.

Q. After you came out of the hospital did you make a second voyage in the employ of the com- 2276
pany? A. Yes, the last one.

Q. That, you think, was about eight months after the collision? A. About ten months after.

Q. And since that time have you been in Havre in work on shore? A. Yes; but not in the service of the Transatlantique Compagnie.

Q. When were you last examined as a witness in reference to the matter of the *Bourgogne;* by anybody? A. After the loss of the *Bourgogne* I was questioned there before Commander somebody, at the—Captain Aubert I think it was—before the Marine Department in Havre; but I have not been examined since that time.

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Q. Have you not talked with anybody about the collision since that time? A. No; never with anybody; and I don't want people to talk with me about it either.

Q. Did you not, in Havre, talk with Mr. Cammeau, who is here present, about the collision? A. No; I don't know him even.

Q. Did you not talk with Mr. Cammeau, here present, at the lodging house of a Mr. Le Marier, in Havre? A. I have already told you that I don't know this gentleman, and I repeat it.

2278 Q. That doesn't answer my question, because one talks with a great many persons that one doesn't know. (Question repeated.) A. No, I did not talk with him.

Q. How many voyages had you been on the *Bourgogne* at the time of the collision? A. That was the only, and unique, one.

Q. Did you sign articles for the voyage? A. We never sign; we are accepted at the office of the Marine Department there, by the chief engineer, and that is all.

Q. Were you employed as an electrician on board the *Bourgogne?* A. Yes, sir.

2279 Q. Not as a fireman then? A. No; I had to do with the electric lights.

Q. Not as a soutier (coal heaver)? A. No; electric light and nothing else; the electric lights and the electric machine; there are what are called soutier electricians; we have those on board; I was what is called a coal heaver electrician; but I had only to do with the electric machines and with the lights.

Q. What has a coal heaver to do with the electrical machines? A. He has to overlook them during all his watch, and repair them if there is any necessity for it.

Q. And you call that the business of a coal
2280 heaver? A. That is what is called a soutier electrician.

Q. Was there any other man on the *Bourgogne* of that grade, that kind, that occupation? A. Yes; Pironnec; he was in the first watch; I don't recollect the name of the one who was in the second watch; and the one of the third watch, which was myself.

Q. Then there was only one of them for each watch? A. Yes; each one four hours watch.

Q. You had charge of the electric machine during

your watch? A. Yes, I did nothing else; we have 2281
to work during the whole time of the watch at our electrical machines, without stopping.

Q. Did you know Pironnec before you went on the *Bourgogne?* A. No; I have never been in the service of the Transatlantique Company before, so I couldn't have known him.

Q. Had you known anybody on board of the *Bourgogne* before that voyage, any of the crew? A. No; no one.

Q. How many composed the watch of which you were a part? A. I can't tell you.

Q. Can you give me the names of those that were in your watch? A. Yes; the chief, Mr. Gautier; 2282
Calvary, who was in the engine room; I don't remember the others.

Q. Don't remember any other? A. No; I recollect Calvary because he had on an oil-skin suit, which he used when he went around looking after the connecting rods, and I laughed at him, because I thought he was a sailor.

Q. Whereabouts in the engine room were you standing to take care of the electrical machines? A. The electric machines are elevated up above the engine, and I was up there, opposite the starting bar.

Q. Where were these connecting rods that you 2283
say Calvary attended to? A. A little way on the side, but down below where I was; there is a passageway between the electric machines and the main engine, as wide as from the table here to the wall (indicating about seven or eight feet). I see other people passing there, the same as they would me in the engine room; people walk before the engine.

Q. The platform that you stand on, as I understand, is higher than the floor of the engine room? A. Yes.

Q. How much? A. About the height of that book-

2284 case (indicating five or six feet); perhaps a little more; it is a little higher or a little lower; I can't say exactly; but higher than the floor of the engine room.

Q. When you stand, attending to your machine, is your back to the main engine? A. Yes.

Q. Had you ever seen Calvary before that watch on which the collision occurred? A. Yes.

Q. When? A. Plenty of times; he ate with us; he ate with me.

Q. Had you ever seen him anywhere except when, as you say, he ate with you, before that time? A. Yes.

2285 Q. Where? A. In the engine room.

Q. When? A. I think I saw him once or twice.

Q. When? A. In the engine room.

Q. Do you mean to say that you had seen Calvary in the engine room before the watch which began at two o'clock that morning? A. Yes.

Q. What was he doing when you saw him in the engine room, before that watch? A. I can't tell you what he did; I saw him in there; I saw him pass through the engine room, but I can't tell you what he was doing; I know, because he had on this oil-skin suit, and I also recollect that the chief of the watch called him by name.

2286 Q. When did he call him by name? On this watch, or on previous watches? A. Previous watches; I saw him sometimes go through the engine room, and I heard him call out "Calvary."

Q. Did you hear any orders given to him by the engineer in charge? A. Yes.

Q. Do you remember what? A. I did the day of the collision; but I don't remember before that; I looked down over the rail, the protecting rail, and I remember seeing him and hearing orders given to him.

Q. Can you remember what orders you heard 2287
given to him? A. No, I couldn't hear.

Q. Couldn't hear the orders. Do you know whether Calvary joined the ship in Havre or New York on that voyage? A. I don't know—of yes; I know that he left Havre with us, because he are with us; he ate at the same table I did.

Q. Were you employed in reference to the electrical machines on the voyage from Havre to New York? A. Yes; nothing else.

Q. During that voyage did you see Calvary at work in the engine room on the connecting rods also? A. No, I did not.

Q. Then I understand that Calvary was never in 2288
the engine room on the voyage from Havre to New York. Do you say that? A. No, I didn't notice him at least; and if he was there I didn't see him.

Q. But on the voyage from New York to Havre you had seen him repeatedly? A. Yes.

Q. Was he there every watch with you? A. I know that he was there that watch, because I joked with him.

Mr. Benedict: I didn't ask that, and move to strike out the answer, and put the question again.

Q. (Repeated.) Was he there every watch with you? A. He belonged to the third watch, but I 2289
can't certify whether he was down in the engine room every time with me or not.

Q. Have you ever seen Calvary since the loss of the *Bourgogne?* A. Yes, I saw him in New York before I went back. When I came here he had gone to sea; this last time he had gone.

Q. Did you ever talk with him about the collision? A. No; we never talk among ourselves about it; we don't want to even hear it talked about.

Q. Was Calvary in boat No. 7? A. I don't know; I don't recollect him.

2290 Q. Do you recollect anybody else that was saved that was in boat No. 7, besides yourself? A. Yes; there was a baker that belonged to the crew.

Q. What was his name? A. I don't know.

Q. Did you know the names of any of the oilers that belonged to that watch? A. No.

Q. Do you know how many there were that belonged to that watch? A. I do not.

Q. Did you see any of the oilers during that watch at all? A. Yes; I saw them working about the engine; but I can't tell you who they were, nor how many there were.

Q. Do you know how many oilers there were
2291 generally at work on the engine? A. I had nothing to do with the main engine.

Q. But you remember seeing oilers there while you were on watch, do you not? A. Yes.

Q. Where were they standing, down below, below the platform where you were? A. Some down below and some up above on the gratings.

Q. You saw them both below and above during this watch? A. Yes.

Q. Was there any other officer in the engine room during your watch after two, except Mr. Gautier, before the collision? A. I only saw Mr. Gautier; there might have been some in the engine room
2292 while I had my back turned, while I was working with my machines.

Q. Was there anybody else working at the electrical machines during your watch except yourself? A. No; I was the only one.

Q. Was there a blackboard in the engine room? A. I don't know.

Q. Was there any other man named "Voisin" on board except you? A. No, I am the only one.

Q. Did you ever see, on board the *Bourgogne*, what is called a "planche" in French, on which to write? A. There is always in every engine room a

blackboard, but I thought you asked me whether 2293
there was a blackboard belonging to my electric machine. In every engine room there is a blackboard and a piece of chalk and the engineer of the watch writes, etc. I got mixed up between my machines and the big engine.

Q. When you were examined before Commander Aubert did you not testify to having seen writing on that blackboard? A. That is an error; I couldn't see it.

Q. Did you not testify before Commander Aubert that you did see it? A. No, I did not; it is an error, I couldn't have seen it.

Q. Did you not testify before Commander Aubert 2294
that you had seen on that "planche" the figures "62"? A. No; that is an error.

Q. There were a good many witnesses examined before Commander Aubert, were there not? A. Yes.

Q. Do you know what number you were in that list? A. I don't know. I was in a hurry to get through with it so that I could go right into the hospital.

Q. Did you not say, before Commander Aubert, that the speed of the engine must have been 62 to 63 turns at the time of the collision; but that you hadn't counted the turns; but had seen the figures 2295
"62" on the "planche"? A. No; I couldn't see it.

Q. Did you give no evidence similar to that? A. No; I couldn't see it, therefore I couldn't say so.

Q. You had left your engine, you say, before the shock? A. Yes.

Q. Had you left your machine in charge of anybody? A. Yes; the chief of the watch.

Q. Mr. Gautier? A. Yes.

Q. Was he up on the platform where you were? A. No; in such a case we say to the chief of the

2296 watch, "Will you just keep an eye on the engine?" He was not up there.

Q. Then you went up on deck. How long did you stay on deck? A. Just time enough to look around; that is all.

Q. And then you went down again to the engine room and reported to Mr. Gautier? A. Yes.

Q. Who did you find in the engine room when you went down? A. Mr. Gautier and the chief engineer, Mr. Dalidot.

Q. Anybody else? A. I didn't notice; I saw the chief engineer and the chief of the watch.

Q. And then you turned right around and went
2297 upstairs on deck again? A. Yes.

Q. There was nobody in charge of the electrical machine when you went down there? A. No.

Q. How long after the collision was it before you went to boat No. 7? A. Perhaps twenty minutes. I turned around and went here and there.

Q. On which side of the ship was boat No. 7? A. On the side that she listed over to.

Q. During this watch tell me what you saw Calvary do? A. I saw him with an oil-skin suit on; he was there at the connecting rods; he talked with the chief of the watch, and he turned and went back and forth.

2298 Q. How far is it from the starting bar, where the engineer stands, to these connecting rods that you speak of? A. They are both about in the middle; right close to the starting bar; they are both parts of the engine.

Q. Was your attention called to the motion of those connecting rods? A. No; it was only through curiosity that I looked at them.

Q. Curiosity about what? A. I oiled my machines every quarter of an hour, and after that I had nothing to do for a quarter of an hour, except walk up and down with my hands behind my back; after

I got through oiling I tried the parts to see whether 2299
they were heating or not, and after that I looked down below and around.

Q. Cast a general look over everything that was below, did you not? A. Well, I looked the same as I always looked; I saw people passing back and forth, and that took my attention for a quarter of an hour.

FRANCOIS NICOLAI, being duly sworn, through the interpreter, and examined as a witness on behalf of the petitioner, testifies:

By Mr. Jones: 2300

Q. Where do you live? A. I belong in Pleherel, Cote du nord.

Q. You were one of the crew of the *Bourgogne* at the time of the collision with the *Cromartyshire?* A. Yes.

Q. What was your position? A. I was a coal heaver.

Q. Where were you stationed? A. In the engine room.

Q. When did you go on watch? A. At two o'clock.

Q. When you say you were a coal heaver what do I understand you to mean by that; your class on 2301
the vessel, or as a description of your duties? A. That was the name by which I was known on the crew list.

Q. What were your actual duties? A. I was stationed at the bilge pumps.

Q. When did you go on watch before the collision? A. At two o'clock.

Q. What were you doing from two o'clock up to the time of the collision? A. I went from one part of the ship to the other, to see if the water was kept out of the compartments about the engine room.

2302 Q. Where were you at the time of the collision? A. In the after fire room.

Q. Had you been much in the engine room during your watch, before the collision? A. As usual.

Q. Who was in charge of the engine? A. Mr. Gautier.

Q. Did you see the chief engineer during your watch? A. No; he didn't come down during my watch.

Q. Who, besides Mr. Gautier, did you see in the engine room during your watch, if any one? A. Mr. Haglon, who was an apprentice.

Q. Anybody else? A. The oilers; the electrician
2303 and the one who looked after the connecting rods.

Q. Do you know any of them by name? A. No; I only knew Voisin by name, who was at the electric machine; and I recollect there was one of the oilers named Magdeleine; I remember there was another man, a big man there; I can't recollect his name; I think they called him Duaud; I am not quite sure.

Q. Did you know any of the firemen? A. Yes, I knew some of them who came from the same country I did.

Q. Can you name any of them? A. Couté, Nevot, both of those were saved; Jean Marie Le Petit, he was saved; Mainguy, he was a coal heaver; he was
2304 saved. Jean Blouin, coal heaver, saved; Rallec, a fireman, saved; Harang, he is dead. Maubuchon, he was also lost. Le Julien, fireman; he was saved. I don't recollect any more. I recollect Le Chaffodec also; I don't recollect all their names. He was a coal heaver also. Le Thiec; he was saved. There were two Mainguys; one was in another watch; he was saved also.

Q. Do you remember a man by the name of Calvary? A. Yes, I knew him.

Q. What were his duties, if you know? A. He was a fireman.

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Q. Do you know where he was stationed during 2305
the watch of the collision? A. No, I can't inform you as to that.

Q. Did you see Calvary any time before the collision, during that watch? A. No, I didn't pay attention.

Q. What did you do when the collision happened? A. I was in the after fire room and I went immediately up on deck.

Q. What did you see there? A. I saw the stern of the sailing vessel just as I got on deck.

Q. Anything else? A. I then went and looked and saw our ship had been run into.

Q. Did you see how much your ship was dam- 2306
aged? A. I saw a pretty large hole in the side of the ship, and several plates smashed in on the water line.

Q. Did you see what was done in regard to lowering the lifeboats after the collision? A. I was at the boat No. 6 on the port side; we tried to get her into the water, but the list of the ship was so great that we were unable to do so.

Q. What did you do then? A. I passed over to the starboard side of the ship and was able to take advantage of boat No. 9; there were several people already in the boat; they were getting her out, and I got in with the others.

Q. And you were saved in that way? A. Yes. 2307

Q. Do you know what, if any, orders were received in the engine room during your watch, before the collision? A. No; because I am sometimes in the shaft tunnel and sometimes in the fire room, and various places.

Q. Do you know whether there was any reduction of the revolutions of the engine during your watch? A. Yes; I noticed that my pumps were not throwing as much water as usual; from which I saw at once that the engine was going slower.

2308 Q. Do you know how long that was before the collision? A. I can't say exactly; it might have been one or two hours before.

Q. How long did that continue? A. This was about an hour before the collision; it continued up to the time of the collision.

Q. Did you see any sails on the *Cromartyshire?* A. Yes; she had sails set; she had sails which were torn; her rigging was considerably damaged.

CROSS-EXAMINED BY MR. BENEDICT:

Q. You say that at the collision you were in the after fire room, I understand? A. Yes.

2309 Q. How long had you been there? A. I can't tell exactly. I went there to clean out the strainer of the hold pump there.

Q. Had you got that cleaned out? A. Yes; just as I got through I noticed the shock and went up above.

Q. How long did it take you to clean out the strainer? A. Five minutes perhaps.

Q. Where had you been before that? A. In the engine room.

Q. Whereabouts in the engine room? A. Behind the engine, beside the condenser.

Q. What were you doing there? A. I was seeing

2310 that the pumps were working all right; when I noticed that a pump didn't throw water properly or work properly, I attended to it.

Q. When you say you were at the condenser is that where you go to watch over the pump? A. Yes.

Q. How long had you been there? A. I don't recollect; I can't say; we go from one place to another; we go into the shaft tunnel to see that the water isn't coming in and we look around.

Q. Is this condenser in the same room where the engineer stands when he runs the engine, or is it

in another compartment? A. It is in the same 2311
room.

Q. How far away from the engine are you standing when you are at the condenser? A. On the opposite side; the starting bar is on the port side and the condenser is opposite, on the starboard side.

Q. On the starboard side of the ship? A. Yes; the condenser is on the starboard side and the starting bar is on the port side.

Q. What is between the two? A. The connecting rods.

Q. Parts of the engine are between those two, are there? A. Yes, they fill up the space between. The condenser is included in the main engine. 2312

Q. How do you know how much water the pump throws? A. I notice by feeling of the discharge pipe; when it is pouring out a good deal of water it is a good deal colder than otherwise; or by the ear you hear the noise of the water passing through it.

Q. Did you put your hand on the pipe when you first went on the watch? A. The one who leaves the watch don't leave it until his engine is working all right; his pump is working all right. I did; I felt of the pipes when I went down. But that is the custom, to have the pump in good order before one leaves and one stays until it is.

Q. When did you feel of it again? A. Every 2313
quarter of an hour we try them.

Q. When was the first after two o'clock that you say you noticed any difference in the water? A. About half-past three or four o'clock I noticed it; I can't tell you the exact moment.

Q. Was that the second time that you had felt of it to see? A. No, I tried the pipes every fifteen minutes, about. Every quarter of an hour we hear a blow on the whistle, which is intended to tell us to try our pumps.

2314 Q. A blow on the siren? A. No; boatswain's whistle.

Q. Who gives that whistle? A. The chief of the watch; that goes on throughout the whole engine room business.

Q. Did you hear the siren blowing any of this time after you went on the watch? A. Yes.

Q. Was it blowing when you went on watch at two o'clock? A. I don't recollect exactly; I know it blew during my watch, but I can't tell you when.

Q. How much of the time during the watch was the siren blowing? A. It had begun to blow shortly after the engine was slowed down.

2315 Q. That doesn't answer the question. (Repeated.) How much of the time during the watch was the siren blowing? A. It was going at the time of the collision; I can't say exactly when it had begun.

Q. Wasn't it blowing when you went on watch? A. I can't say exactly whether it was or not; I know it was blowing during my watch.

Q. Will you say that the siren was not blowing when you went on watch? A. I can't say yes or no; I can't say exactly.

Q. Can you give us any more definitely what part of the watch the siren was blown? A. The siren
2316 was going almost all the watch; we are used to that, and we don't pay special attention to that.

Q. These men, of the names that you have mentioned, were they in the watch that you belonged to, or were any of them in the other watch? A. Yes; they all belonged to my watch.

Q. You went right on deck as soon as the collision happened, I understand? A. Immediately.

Q. Did you go immediately to boat No. 6? A. Yes.

Q. Who was there at boat No. 6? A. Nobody belonging to the boat; officers, etc., came there.

Q. Were they there before you were? A. No, 2317
they came there about the same time I did, and I commenced casting the boat loose.

Q. How long did you work at No. 6? A. Ten or fifteen minutes.

Q. And then you went to No. 9? A. Yes.

Q. Was anybody working at boat No. 9 when you got there? A. Yes; it had been already swung out; quite a while.

REDIRECT-EXAMINATION BY MR. JONES:

Q. To what lifeboat were you assigned? A. No. 6.

2318

SYLVESTRE ALLAIN, being duly sworn, through the interpreter, and examined as a witness on behalf of the petitioner, testifies:

By Mr. Jones:

Q. You are one of the men on the watch of the *Bourgogne* when the collision took place with the *Cromartyshire?* A. Yes.

Q. Where were you stationed? A. I was below; I was taking the place of a fireman who was sick, in the fire room; I was in the fire room.

Q. Do you know anything about the condition of 2319
the furnaces of the *Bourgogne* before the collision? A. Just before the collision the doors of the ash boxes had been closed.

Q. Do you know why they were closed, and what effect the closing had? A. Yes, to keep the ship from going too fast.

Q. Were you stationed at any particular post in the fire room? A. I was in the forward part of the fire room.

Q. Did you, during your watch, go into the engine room? A. No.

2320 Q. When did you first know of the collision? A. About five o'clock I felt the shock.

Q. Then what did you do? A. I went at once up on deck.

Q. Then what did you see and do? A. I saw that the bridge had been lifted and carried away by the collision; and I saw that the rail had been carried away; in fact where the collision occurred I saw that everything was carried away. I only had on a pair of trousers and I went down into the firemen's quarters to get a shirt; as soon as I got below I got my shirt and went back again up on deck. I saw water coming in at the store room
2321 of the engine room, coming in through the door. From there I went to my boat, No. 10; there were a great many people there; and the boat was full of people, and it was hoisted up, clear up two blocks. My brother arrived at that time, and was shedding tears. This boat was so full of people that there was no place for me.

Q. Go on and tell what else you saw and did. A. There was a raft that came overboard there over the skylight, to the engine room, and when I saw that raft got into the water I jumped overboard and I got up on this raft; that is all.

Q. On which side of the *Bourgogne* was boat No.
2322 10? A. On the port side; this raft was on the port side also; this raft, on account of the list of the ship, went over on the starboard side, and I went over with it.

Q. Coming back to the fire room before the collision, did you see any of the other firemen? A. Yes; who weren't doing anything; they were not working.

Q. Do you know why that was? A. Because there was fog, and we were prohibited from stirring up the fires.

CROSS-EXAMINED BY MR. BENEDICT: 2323

Q. When did you go on watch? A. Two o'clock.

Q. Did you go into the fire room at that time? A. Yes.

Q. Did you hear the siren in the fire room? A. Yes.

Q. When you went on watch? A. No, not right away; a little while after.

Q. When you began to hear it how did it blow? A. It started off and made a noise and then it increased.

Q. How often did it blow? A. At intervals of five minutes, and perhaps a little more frequently than that, at first. 2324

Q. Did it afterwards begin to blow at shorter intervals? A. No; it kept on blowing at about the same intervals.

Q. Up to the time of the collision? A. Yes.

Q. So that from a little after the time that you came on watch up till the collision you heard the siren blowing at regular intervals, the same intervals all the time? A. Yes; that was my observation.

Q. Did you leave the fire room at any time during your watch before the collision? A. About an hour and a half after I went down into the fire room the siren commenced to blow and continued to whistle 2325 about every five minutes up to the time of the collision.

Q. Wasn't the siren blowing when you first came on watch? A. I didn't notice that it did.

Q. What called your attention to it afterwards any more than at the first time? A. I had sent two or three wagons of coal, and I said to myself, "There goes the siren."

Q. Was there an order given to close the doors of the ash pits? A. Yes; since they were closed.

Q. Who gave the order? A. I don't know.

2326 Q. Did you hear any such order? A. No; I saw that they were closed; I don't know who gave the order to close them.

Q. Then you didn't help close them yourself? A. No; I didn't go to close them; that isn't my business.

Q. Whose business is it? A. The first fireman.

Q. Do you know what his name was? A. No.

Q. Who gave you the order to take the place of a sick fireman? A. The captain-at-arms; and the chief engineer called for me.

Q. Who was the fireman that was sick? A. I don't know who he was.

2327 Q. How do you know that there was anybody sick? A. They called for me at noon, and wanted to know if I would go down and take the place of a fireman who was sick.

Q. Was the fireman's name Bosec? A. I don't know.

Q. That was what time, do you say, that they asked you if you would take the place of the sick fireman? A. It was at noon that I was asked if I would go down and take the place of this sick fireman.

Q. What was your post on board? A. Seaman.

Q. You said that your brother came there to the other boat; what was your brother's name? A.

2328 A. Josef; he is dead. He has died since; home.

Q. What was he on board? A. Fireman.

Q. Did you know the names of any of the firemen that were in the fire room with you? A. No.

It is stipulated by counsel on both sides that the Western Union Telegraph Company reported the *Bourgogne* as passing Sandy Hook at 12.45 on the 2nd day of July, 1898, and it is understood that this message is sent when the steamer drops her pilot.

Adjourned to Friday, at 11 A. M., or 2.30 P. M.

NEW YORK, November 18, 1901. 2329

Met pursuant to adjournment.

Present—Mr. JONES, Mr. BENEDICT, Mr. MURRAY, a REPRESENTATIVE from Mr. KALISH, and THE INTERPRETER.

FRANCOIS HAMEL, being duly sworn and examined, through the interpreter, as a witness for the petitioner, testifies:

By Mr. Jones:

2330

Q. You were a stoker of the crew of *La Bourgogne*, were you not? A. Yes.

Q. What was your watch during the night of the collision between the *Bourgogne* and the *Cromartyshire?* A. From two to six A. M.

Q. In that watch the collision occurred? A. Yes.

Q. Where were you actually occupied? A. In the forward middle fire room at boiler No. 4.

Q. Do you remember, during that watch, any reduction of the steam pressure or closing of the fire-boxes of the *Bourgogne?* A. Yes.

Q. Can you recall when these things occurred? A. I can't fix exactly the time, but more than an hour before the collision.

2331

Q. What was done then with the boilers and fires? A. Instead of raking the fires, as usual, they allowed them to go as they were.

Q. Were the fire boxes and drafts closed? A. Yes.

Q. What effect, if any, did this have on the steam pressure in the boilers? A. It reduced the pressure.

Q. Was this act of closing the fire boxes and ceasing to coal the fires observed with all the furnaces and boilers? A. In the fire room where I was, yes.

2332 Q. Did you see any of the furnaces other than the ones that you were tending? A. No; I only saw four; those which were in the compartments where I was.

Q. Did you see any of the other firemen? A. We were four; I only saw the other three in my compartment.

Q. Do you know a man by the name of Jean Calvary? A. Yes.

Q. What position did he occupy on the *Bourgogne?* A. He was a fireman, but he looked after the connecting rods, replacing a man who was sick.

Q. Who was the sick man? A. Antoine Bozec.

2333 Q. Do you know of your own knowledge whether Bozec was sick? A. Yes.

Q. How do you know? A. I helped him get out of his bunk and took him to the sick bay; assisted him.

Q. What do you know about the assignment of Calvary, if anything, to take his place? A. I saw him the night before; one of the engineers' boys came to notify him that instead of taking his regular watch he would take Bozec's place, in his watch.

Q. And Bozec's regular position was as the oiler to the connecting rod?

Objected to as leading.

2334 Q. What was Bozec's regular employment? A. He looked after the connecting rods.

Q. Where? A. In the engine room.

Q. What did he do to the connecting rods, if anything? A. He touched them with his hand to see whether they were heating.

Q. Did he have anything to do with oiling the connecting rods? A. Yes, he oiled the bearing of the thrust shaft.

Q. What did you first know of the collision? A. I heard the noise of the shock.

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Q. Where were you at that time? A. In the fire- 2335
room; I was at my place.

Q. At what boiler? A. No 4.

Q. Did you hear anything about the closing of the bulkheads, the water-tight bulkheads, after the collision? A. Yes.

Q. What was the order? A. Close the water-tight doors, and the doors of the bunkers all over; everywhere.

Q. Did you see anything of the inrush of water? A. No.

Q. Did you see anything of the damage that was done by the *Cromartyshire?* A. Yes; opposite the bunks I saw the rail had been carried away and the 2336
boats smashed.

Q. What did you do after the collision; just state what you did, in your own way? A. Upon the order of the first fireman I lent a hand to close the water-tight doors, the water-tight door between the after and forward fire rooms, with the assistance of the first fireman, whose name was Fraval; after that I went up on deck; I then went back again into the firemen's quarters; I then went back up on deck to boat No. 6.

Q. Was that the boat to which you were attached? A. No; I don't recollect now which boat mine was; but I don't think it was that one.

Q. How did you come to go to boat No. 6? A. 2337
I went to the first one that I came to.

Q. What did you do? A. We tried to get her out; but unsuccessfully; we tried several times.

Q. Which side was boat No. 6? A. Port side.

Q. Where did you go after that, if anywhere? A. I went then from there to boat No. 7; on the starboard side.

Q. Then what did you do? Go on and tell your story in your own way. A. We got her into the water and the funnel fell on her, and those of us

2338 who were able to do so jumped overboard; I was one of those who jumped overboard.

Q. Who was in charge of that boat? A. I don't know; I can't say.

Q. One of the officers of the ship? A. Yes; a lieutenant.

Q. Was anybody killed by the falling of the funnel? A. I don't know; I was in the water for quite a little while, and I was unable to see what was going on.

Q. What damage was done to the lifeboats by the falling of the funnel? A. I don't know; I didn't see it afterwards.

2339 Q. How did the funnel strike the lifeboat? A. It fell in the length; lengthways of the lifeboat.

Q. Did it sink the lifeboat? A. I don't know; I jumped overboard and didn't see it again.

Q. You were not struck by the funnel yourself? A. No.

Q. Did you see anybody struck? A. No.

Q. What became of you after you jumped overboard? A. When I was in the water swimming there I looked on board and saw there was a life raft there, and I swam to the ship and I got back on board of the *Bourgogne;* the raft slid overboard and I got on to one of them; I jumped on to one of them.

2340 Q. Then what did yu do? A. I remained on this raft until a boat came and saved us.

Q. A boat from where? A. It was one of the boats of the *Bourgogne;* I think it was No. 9; it came from the *Cromartyshire.*

Q. How was that boat manned, if you know? A. By the men from the *Bourgogne.*

Q. You afterwards went on the *Cromartyshire?* A. Yes.

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CROSS-EXAMINED BY MR. BENEDICT: 2341

Q. Your watch began at two o'clock? A. Yes.

Q. Were you called before that hour? A. Yes; a quarter before two.

Q. Where were you till two o'clock, after you were called? A. I was changing my clothes beside my berth.

Q. Did you hear the siren blowing during that time? A. No, I don't recollect of hearing it.

Q. Wasn't the siren blowing when you went on watch? A. I don't recollect.

Q. Did you hear the siren at any time during your watch? A. Yes.

Q. When? A. I think about an hour after I went 2342
on watch.

Q. Did it continue to blow from that time until the collision? A. Yes; continually.

Q. Had you known Jean Calvary before this voyage on the *Bourgogne?* A. Yes.

Q. How long had you been attached to the *Bourgogne?* A. This was my second voyage.

Q. You joined her at Havre? A. Yes.

Q. And made a voyage to New York and back, and then this was the next one; is that it? A. Yes.

Q. Was Calvary on the boat all the first voyage that you were there? A. Yes.

Q. What was he doing during that first voyage? 2343
A. Fireman; he fired.

Q. While the *Bourgogne* was coming from Havre to New York the second time what did he do? A. He was a fireman.

Q. Did he at any time fire in the compartments where you were? A. He was not in my watch.

Q. Do you know what watch he was in? A. Yes.

Q. What? A. The first watch.

Q. What was your watch? A. The third.

Q. The hours of the third watch were from two to six, as I understand? A. Yes.

2344 Q. When were the hours of the first watch? A. From six to ten.

Q. While you were there on watch was there any order given to close the fire room doors? A. Yes.

Q. Who gave it? A. I was quite a way from the engine room; I don't know; but it came to me from the first fireman.

Q. How long do you say that was before the collision? A. I don't know; a good while; I didn't have any clock there; I can't say exactly, but I think more than an hour.

Q. From the compartment in which you were you can't see into the fire room, can you? A. No.

2345 Q. Did you go in the engine room at any time after the *Bourgogne* left New York, before the collision? A. No.

Q. Did you know Bozec before this voyage? A. No.

Q. Had he been there on the previous voyage also? A. Yes.

Q. What was his place during that first voyage? A. The same thing.

Q. Tell me what Bozec did during the first voyage? A. He was on the crew list as a fireman; but instead of being in the fire room he was in the engine room, looking after the connecting rods;

2346 when the ship was at the wharf he looked after one of the donkey engines.

Q. You never saw him in the engine room, did you? A. Yes.

Q. When? A. The voyage preceding.

Q. But you hadn't seen him in the engine room on this voyage, as I understand, at all? A. In coming to New York, yes, on the way to New York.

Q. On the second voyage? A. Yes.

Q. How did you come to be in the engine room at the time you speak of, when you say you saw

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Bozec? A. I went in to get some water to wash 2347
myself.

Q. Is that the place where firemen go to get water to wash themselves, into the engine room? A. Not always.

Q. Do they ever? A. Yes; sometimes.

Q. Where do they get water otherwise? A. In the fire room.

Q. How did you come to go into the engine room to get water if there was water in the fire room? A. It was an idea I had.

Q. Was Bozec in your watch? A. Yes.

Q. How many men were in your watch? A. In the fire room there were twelve who fired. 2348

Q. When you went on watch how did you go to this compartment of the fire room where you went? A. Through the after fire room.

Q. That doesn't bring you where you can see into the engine room at all. A. No.

Q. You didn't see Calvary then that morning when you went on the watch? A. No; I saw him go down into the engine room from the firemen's quarters, but he didn't go down the same way I did.

Q. But you say he wasn't in your watch; did you see then anybody go down except men of your own watch? A. I have already explained to you that the night before order was sent to him that instead 2349
of taking his regular watch he should replace Bozec.

Q. You have said that the regular time of the first watch was from six to ten? A. Yes.

Q. And that was Calvary's watch? A. Yes.

Q. Then how does it come that he should get orders at two o'clock when his watch didn't come until six? A. In order that he should replace Bozec who had been sent into the hospital.

Q. Did you hear any order given to him to replace Bozec? A. Yes.

2350 Q. When was that? A. I can't tell you the hour, but it was the night before, it was in the evening.

Q. Who gave the order to him? A. One of the engineers' boys came, by order of the engineer.

Q. Do you know the name of the boy? A. No, I don't now recollect his name.

Q. Did you hear what the boy said to him? A. Yes.

Q. Where were you when you heard that order given to Calvary? A. In our quarters.

Q. That is the firemen's quarters? A. Yes.

Q. Then it was not your watch when you heard that order given? A. No.

2351 Q. Do you recollect which watch was on at that time? A. No, I am not even sure that my watch was finished when I heard that.

Q. What were you doing in the firemen's quarters, if your watch was not finished? A. Sometimes we go up there to get soap or clean clothes.

Q. Before your watch is terminated? A. Yes.

Q. I don't want any mistake about this. I ask you again if it was in the firemen's quarters the night before the collision that you heard the order given to Calvary to replace Bozec? A. Yes.

Q. Are there gauges to show the pressure in the fire room, where he was at work? A. Yes.

2352 Q. Did you examine them at any time? A. No; there is a fireman that attends to it.

Q. What do you mean by the shaft? A. The propeller shaft.

REDIRECT-EXAMINATION BY MR. JONES:

Q. You have said something about there having been twelve men in the fire-room; do you mean that there were twelve men in your watch, or twelve men men in the fire room? A. I am speaking of those who attended to the fires in all the fire rooms of my watch.

POOR COPY

Q. Do you know Fraval? A. Yes; the first fire- 2353
man.

Q. Do you know what has become of him? A. No; he was lost in that disaster.

Q. Do you know what other men in your watch were lost? A. Not all; I can't give you all the names; I can give you some, but I can't give you all.

Q. Give me those that you remember? A. Maubuchon, Harang, Le Corre, Huon, Pougham; he was one of the first firemen.

Q. Do you recollect any others who were lost? A. I think that is all that I recollect.

Q. Do you know if any of your watch have since died, and if so state their names? A. There was 2354
one by the name of Thomas, who was left here in the hospital; he is now dead; but he was not on board at the time of the collision.

Q. He was not on board at the time of the collision? A. No, he was left in New York in the hospital.

Q. Can you think of any others who have since died? A. I cannot.

Q. Did you have, among your fellows, a man by the name of Blouin? A. Yes.

Q. What has become of him? A. I heard that he was dead; but I don't know.

RECROSS-EXAMINATION BY MR. BENEDICT: 2355

Q. How many men do you say there were in the fire room where you were? A. We were four in my compartment.

Q. Give me the names of the other three? A. Le Corre, Huon, Fortin.

Q. Was there a man there named Quadon? A. I don't recollect of any such.

By Mr. Jones:

Q. Do you know where Le Corre is? A. He was drowned.

Q. And Huon? A. Huon also.

2356 LOUIS LE JULIEN, being duly sworn and examined, through the interpreter, as a witness on behalf of the petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. In Havre.

Q. What was your position on the *Bourgogne?* A. Fireman.

Q. When did your watch begin on the morning of the collision? A. At two o'clock.

Q. Where were you stationed? A. In the fire-room No. 2, which was one of the after middle fire-rooms.

2357 Q. How many fire-rooms were there all together on the *Bourgogne?* A. Four; two in the middle and one at each end.

Q. Did they all communicate with each other? A. Yes; there is a communication from one end to the other.

Q. How did they communicate with each other? A. There was a passageway so that we could send coal from one to the other; there was a railroad track laid.

Q. What was the condition of the fires in your compartment before the collision? A. They were not high.

2358 Q. State whether or not the ash-boxes were closed? A. Yes; in the fire-room where I was.

Q. How long prior to the collision did you put coal into the fires? A. At least an hour; perhaps more; I don't know exactly.

Q. What effect, if any, did the omission to put in coal and the closing of the ash-boxes have upon the pressure of steam of the boilers, if you know? A. That should diminish the speed; there was probably fog and that should have diminished the speed.

Q. You don't quite answer my question directly. I ask you what effect the omission to put in more

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coal into the furnaces and the closing of the ash- 2359
boxes had upon the pressure in the boiler? A. It would diminish the pressure also.

Q. Where were you at the time of the collision? A. I was below.

Q. At your post in the fire-room? A Yes; standing up before my boiler.

Q. Did you feel the shock of the collision? A. I felt it a little; but it was the noise that made me turn around and look up to see what the matter was.

Q. What orders were given in the fire-room after the collision? A. The chief engineer gave two or three blasts on his whistle, in order to tell everybody to get out and save themselves. 2360

Q. Did you hear any order about closing the bulkheads? A. I didn't hear orders given to close the doors, but I saw them closed.

Q. Did you notice whether the *Bourgogne* after the collision took a list to one side or the other? A. Yes; when I got on deck she had a list.

Q. What did you do when you got on deck? A. I went up by the grating, and when I got on deck I went to boat No. 8; there were too many passengers around in this boat, and I stayed there a while and got over through the skylight of the engine room on to the starboard side; and I got on a raft and left the ship.

Q. Did you see anything of the captain when you 2361
came on deck? A. Yes; I saw him on the bridge; when I was on the raft I saw him.

Q. What, if anything, did you have to do with boat No. 9? A. From the raft I got into boat No. 9.

Q. How was that boat manned? A. I don't know; there were fifty-seven people in her; I don't know how she was manned.

Q. Who were doing the rowing? A. The first one that found himself there; there were firemen and sailors.

2362 Q. Of your ship? A. Yes; there were passengers also; I don't recollect.

Q. To what boat did you belong? A. No. 11.

Q. Why didn't you get into that? A. When I got on deck it had gone.

Q. Did you afterwards see that boat? A. Yes, when I was on the grating, up above there, she was quite a ways off; astern.

Q. Doing what? A. There were people in it.

CROSS-EXAMINED BY MR. BENEDICT:

Q. How many people were in it? A. I don't know.

2363 Q. About? A. I can't say; I don't know.

Q. Was she half full? A. She wasn't full of people; there weren't many in, but I can't tell you just how many. Afterwards I saw when she came alongside of the English ship that there were only a few people in her.

Q. Did you know any of those that came alongside of the *Cromartyshire* in her? A. No.

Q. Did you get on to the *Cromartyshire* before No. 11 got there? A. No; she got there before we did; people were getting on board of the *Cromartyshire* at the time that we came alongside.

Q. Which watch were you in? A. The third
2364 watch.

Q. What were the hours of that watch? A. From two to six.

Q. Then the second watch would be from ten till two? A. Yes.

Q. And the first watch from six till ten? A. Yes.

Q. Were you called before two o'clock? A. Yes, a quarter of an hour before; that is the custom; to call us a quarter of an hour before we go below to the watch.

Q. Where were you during that time till two

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o'clock? A. I was getting ready; dressing myself 2365
and getting ready to go on watch.

Q. Was the siren blowing? A. I can't say; I heard it after we were below; a short time after.

Q. How soon after did you hear it? A. I can't tell you exactly the time after.

Q. Half an hour? A. Half an hour or an hour after they commenced to blow the siren; I can't tell you exactly.

Q. And from that time until the collision was it blown continuously? A. Yes; it stopped whistling and then began again.

Q. How long were the intervals? A. Perhaps five or six minutes. 2366

Q. How many firemen were in the compartment that you were in? A. Four.

Q. Can you give me their names? A. Chaffodec, who was drowned; Le Petit, the other one; I don't what his first name was; then there was one whose name was Coutet or Couteau; I don't recollect just which it was.

Q. What became of those other men? A. I don't know what became of those other two; I haven't seen them since.

Q. You say that at the time of the collision you were standing right in front of your boiler? A. Yes.

Q. How long had you been standing there? A. 2367
At least half or three-quarters of an hour that I had stood there doing nothing.

Q. Before that what had you been doing? A. The last thing I did I closed the doors of the ash-boxes.

Q. The question is what were you doing before the half or three-quarters of an hour that you stood there? A. I might have put in coal, perhaps twice, into the fire.

2368 Q. Did you put on coal as soon as you went on watch? A. Yes; some.

Q. How long before you put on coal the next time? A. I think about an hour after that I put in a little; just enough to cover the fire.

Q. And then, an hour or so after that, you shut the doors? A. Yes, about; it was about four o'clock, half past three to four, that the doors of the ash-boxes were shut.

Q. Did you at any time look at the gauge to know what the pressure on the boiler was? A. No.

Q. Was there anything that you can tell that you did after the collision, before the engineer whistles,
2369 as you say, to tell everybody to get out? A. I was going up? A. Yes; that was a few minutes after were given.

Q. Did you start on deck as soon as the collision had taken place? A. Yes; not absolutely right on the instant, but right away after.

Q. You say that the engineer's whistle to everybody to save themselves was given while you were going up? A. Yes; that was a few minutes after the collision.

REDIRECT-EXAMINATION BY MR. JONES:

Q. Had you seen anything of one of the lifeboats
2370 of the *Bourgogne* that was taken possession of by some Austrian sailors, who were third-class passengers? A. In the boat where I was I had to get myself down into the bottom of the boat on account of the people that were over and on me, etc., and I wasn't in a position where I could see very well.

Q. Then you don't know anything about the seizure of this boat by Austrian sailors? A. Yes; the Austrians seized boat No. 11.

Q. That is the boat that you have already stated you saw astern of the *Bourgogne* after the collision? A. Yes; that is the one.

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Q. Had you, as a fireman, anything to do with 2371
watching and reporting the condition of the steam gauges connected with the boilers? A. No; the first fireman has charge of that.

Q. Who was he? A. Fraval; he was lost.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You have spoken of Austrian sailors; how do you know that they were Austrian sailors? A. I heard it from other people; I wouldn't have known it except from that.

Q. Did you hear anything about what ship they were sailors of? A. No.

Q. Did you see them on the *Cromartyshire?* A. 2372
Yes, yes; they came with us a part of the way; they came to Boston, and I think they came to New York.

Q. Do you know how many there were? A. I can't tell you; no.

Q. Did you have any conversation with them at that time? A. I didn't know the language necessary to talk with them.

Q. Did you see anybody having any conversation with them? A. Probably there were some; I don't recollect.

YVES MARIE MAIGNY, being duly sworn and ex- 2373
amined, through the interpreter, as a witness on behalf of the petitioner, testifies:

By Mr. Jones:

Q. You were a stoker on the *Bourgogne*, were you? A. Yes.

Q. Were you on duty at the time of the collision? A. No.

Q. Where were you? A. I was in my bunk.

Q. Were you asleep? A. Yes.

2374 Q. Were you aroused by the shock of the collision? A. Yes; by the shock.

Q. Tell, in your own way, what you did, what you saw, and what you heard after you were aroused? A. After that blow of the collision I didn't hear anything, and I went up on deck to see what had occurred; I saw the captain and the second captain who were also looking to see the hole that had been made by the ship.

Q. Go on and state in your own way what you saw, what you heard and what occurred? A. I went back afterwards, down in our quarters, to look for a pair of trousers; I went up on the spar deck
2375 again and we tried to swing some of the boats out, and instead of swinging out they swung back on us.

Q. Which side of the ship was this? A. It was on the port side; I didn't stir from there afterwards; this was boat No. 8; I didn't leave that place. I stayed there until the ship went down. I went down with her, and afterwards I came up to the surface of the water, and when I came up I found a boat that was capsized, bottom side up. I got on to her.

Q. Do you know the number of that boat? A. I don't know whether it was No. 7 or No. 5; I think it was one of those two.

2376 Q. Go on and state anything else that you can? A. I stayed there until a boat came for me.

Q. How long were you in the water? A. Six hours and a half or seven hours.

Q. Do you know the number of the boat that picked you up? A. Yes; No. 11.

Q. Who were in boat No. 11 when you were picked up? A. There were seamen, sailors and waiters and firemen, all mixed up.

Q. Any passengers? A. No.

Q. Did you see anything of any lifeboats that were filled with passengers? A. I didn't see any;

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we were the last that arrived on board the sailing 2377
ship.

Q. Then I understand that the other boats had arrived at the *Cromartyshire* before yours arrived? A. Yes.

Q. You don't know who were in those boats? A. No; there was a passenger that arrived with us; I don't know whether he was a second or third class passenger.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Which watch did you belong to? A. The first watch.

Q. Can you remember any other men of that 2378
watch? A. Yes; I recollect some of the names, but not all of them; at that time I knew them all, but since that I have forgotten.

Q. Tell me all that you remember. A. Rion, Huon, Calvary; but Calvary's watch was changed; he was put into the third watch to go in the engine room; I don't recollect the other names. At the time I knew them all, but I have forgotten them since that time.

Q. When do you say Calvary was taken out of the first watch? A. I don't recollect; he was three or four days in the other watch; I don't remember whether it was in the morning or the evening that 2379
he had been changed. That is a job that most people don't like, to go down in the water there, instead of being at the fires.

Q. On the voyage over, Havre to New York, was Calvary in your watch, or not? A. Yes; he was understood to belong to my watch, but he nad been changed to the third watch.

Q. Was he changed while you were going from Havre to New York? A. Yes; it was on the voyage from Havre to New York that he was put to replace the other man; but on the logbooks, etc.,

2380 on the crew list, he was supposed to belong to the first watch.

Q. You never saw the crew list, you don't know anything about that? A. He was taken on board as belonging to the first watch, and he must have been on the list as such.

Q. Who was the man that he was put to replace? A. Bozec.

Q. What was the reason of his replacing Bozec? A. Bozec was sick; he was prohibited from working.

Q. How many days before you got to New York was Bozec taken sick? A. I don't know exactly;
2381 three or four days.

Q. Did Bozec go to the hospital here in New York? A. No; he didn't think he was so sick; they took care of him on board.

Q. Was Bozec on duty at all while the vessel was in New York? A. No.

Q. Did he do any work after the vessel left New York? A. No; he was sick the whole voyage.

Q. What hours was your watch? A. From six in the morning till ten.

Q. And in the evening before the collision? A. From six to ten, all the time.

Q. And you turned in at ten? A. No, I stayed
2382 up in our quarters some time; I turned in about eleven o'clock.

Q. Did you hear the siren blow before you turned in? A. No; there was no fog at that time.

Q. Were you out on deck during that time? A. Yes, I went up on deck; it was fine weather then.

Q. Had you known Calvary before this voyage of the *Bourgogne?* A. Yes.

Q. How long had you known him? A. Oh, some fifteen years.

Q. How many voyages had you been on the *Bour-*

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gogne at the time of the collision? A. It was my 2383
second voyage.

Q. Was Calvary also on the ship the voyage previous to the voyage of the collision? A. Yes; I wasn't on board the preceding voyages; I made two voyages. I was on board and made a voyage, and then I went to the hospital. Calvary was on board when I came back on board again from the hospital, so I know he must have been there.

Q. Did you hear the order given to Calvary to replace Bozec? A. No.

Q. Did you have any conversation with Calvary after he was taken out of your watch? A. Yes, frequently; we were both in the same quarters to- 2384
gether.

Q. Did you have any conversation with Calvary after the vessel left New York? A. Yes; more than once.

Q. Have you had any conversation with Calvary since the vessel was lost? A. Yes; I was with him on the *St. Simon.*

Q. Have you seen him here in New York? A. No.

Q. Did you leave the *St. Simon* when he did? A. No, he stayed on board and I came off from her.

Q. When did you leave her? A. Four or five months ago.

Q. Where have you been since then? A. I made 2385
a voyage on the *Labrador* since that time.

Q. When did you arrive here in New York? A. We came on the *Savoie* a week ago.

Q. Came from Havre then? A. Yes.

Q. When was the last time you saw Calvary? A. When I was on board the *St. Simon.*

Q. Which is how long ago? A. Four months and a half or five months; I don't remember exactly.

Q. How long were you with Calvary on the *St. Simon?* A. During one voyage; to go and come.

2386 Q. Was that the only voyage that you have been with him since the collision? A. Yes.

Q. Did you have any conversation with him on that voyage about the collision, or about what happened at that time? A. No, never, never; we never talked about it.

Q. So that you have never talked with Calvary at all about the collision since it happened? A. No, never.

Q. Have you ever talked with anybody about the collision since then? A. No, I have never talked with anybody about those matters.

2387

Met pursuant to adjournment.

2.30 P. M.

EMIL HENRI SCOL, being duly sworn and examined, through the interpreter, as a witness for the petitioners, testifies:

By Mr. Jones:

Q. You were the second purser (Sous commissaire)? A. Yes.

Q. State in your own way what your duties were as assistant purser? A. My duties, as commis-
2388 saire, consisted in looking after the second and third-class pasengers.

Q. Did you have anything to do with the purser's accounts? A. Yes; I had to draw up papers as secretary of the purser.

Q. Did your duties comprehend the receipt and custody of any moneys that might be deposited by passengers? A. All money which was deposited by the second and third-class passengers passed through my hands; they never went directly to the purser, but applied to me.

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Q. Where was your state-room on the ship? A. 2389
At the stairs that go down into the second-class cabins.

Q. Where was the cabin of the purser? A. At the entrance of the first-class passengers' quarters.

Q. State whether or not the second and third-class passengers were permitted to have access to the purser's cabin? A. With difficulty; it was both prohibited and unhandy for them.

Q. What, if anything, did you have of the entire accounts of the purser? A. I am his secretary; I am, so to speak, learning the business, to become purser in my turn; but I make all the duplicates.

Q. Do I understand, by your answer, that the 2390
accounts are made up by you, or passed under your view? A. All the documents, the papers, that belong to the company are made in duplicate or triplicate; that is what I do; I see that they are so made.

Q. State whether any moneys deposited by any of the passengers, of whatever class, would come under your notice? A. Second and third-class passengers; yes, always; but the first class possibly, but not always.

Mr. Benedict and Mr. Murray state that they do not represent Mr. Cammeau.

Q. What time did you retire on the night of the collision? A. I made my usual rounds at mid- 2391
night, and turned in at half past twelve.

Q. Do you know whether the bar room of the ship was closed that night before you retired? A. At eleven o'clock exactly that night, the same as the other nights; I assisted at closing the bar.

Q. What time was the smoking room closed? A. (English) The same hour.

Q. What time was the dining saloon closed? A. (English) It is never closed.

Q. Are the lights extinguished at any hour? A. At eleven o'clock three lights out of four are put

2392 out; there is one light left so that people can see in there in case they want to go in.

Q. What is done, if anything, in regard to a regular closing of the dining saloon of the second class? A. It is the same thing.

Q. How about the dining room in the third class? A. (English) In the third class there is no dining saloon.

Q. How do the third-class passengers eat? A. (English) In the same place where they sleep.

Q. Are tables provided there? A. (English) Yes, there is a table there, but there is not light enough to play cards, or amuse themselves.

2393 Q. How about the lights in the saloon of the first and second class, are they sufficient after eleven o'clock to enable people to play there or enjoy themselves? A. (English) With great difficulty; if you sit just under the lamp.

Q. State whether or not, on the night in question, you observed that any supplies were furnished to people in the saloon of the first or second class from the bar room? I mean by that question, after the closing of the bar. A. No; nothing was brought in from the bar; no drinks.

Q. I understand you to say that you retired about half past twelve? A. (English) Yes.

2394 Q. Were you around about the saloon of the first and second class before that time? A. Yes, and the third class also. I made a round through the whole ship, first, second, and third-class quarters.

Q. One of the witnesses in this case, a Mr. Cammeau, testifies that there was a good deal of gaiety on board that night, and he said, among other things, that there was champagne and dancing and merry-making in the saloon, in which the officers of the ship participated. State whether or not you observed anything of that kind? A. Outside of the

POOR COPY

doctor and the pursers, the officers don't go in the 2395
dining rooms of the first and second class.

Q. That doesn't quite directly answer the question. A. And they were not in there upon the night in question.

Q. State whether or not there was dancing going on before you retired at half past twelve? A. My position on the ship is in the second-class quarters; therefore I have nothing to do with the first-class passengers until I make my rounds at midnight; but I promenaded on the deck there that night, and I didn't hear or see anything of that sort.

Q. The same witness, Mr. Cammeau, says that there was champagne being passed out among the 2396
third-class passengers, of which he was one. Did you see anything of that kind? A. No; I maintain that that is not right; at the bar of the third-class people they only sell beer and cognac.

Q. The same witness, Mr. Cammeau, says that these alleged gaieties were a part of the preparations being made for the 4th of July celebration, the next day. Do you know anything about what preparations were made? A. Yes; I had been personally charged with the manufacture of some little flags, with four of the stewardesses, and I asked two or three second-class passengers to help us, and the whole labor of that was finished at about five 2397
o'clock in the afternoon.

Q. Did any of that work take place in the evening, or during the night of the collision? A. (English) No.

Q. When you made your last round, before going to bed, did you see anybody in the first-class saloon? A. (English) No; I saw that the door only boy who was on watch; the waiter, who was on watch there.

Q. Do you know this Mr. Cammeau? A. (English) I have seen him here; I know who he is.

2398 Q. Did you see him on the *Bourgogne?* A. (English) Not on the *Bourgogne;* on the *Cromartyshire,* on the *Grecian,* and at Halifax.

Q. When you were making your round, before going to bed, on the night of the collision, did you see anything of that gentleman? A. No, I don't remember; he was a passenger among a whole lot of passengers, I suppose.

Q. Did you see any passengers on deck when you made your last round? A. (English) I don't remember that.

Q. Do you remember whether you saw any passengers in the second-class saloon? A. The last
2399 second-class passengers who were up there were with me up on deck, and when I told them I would have to leave them to make my rounds they left me and went to turn in. There was no one there; there were only three people with me; there was a gentleman and his wife and another lady there.

Q. Were those all the second-class passengers you saw? A. (English) Yes.

Q. Did you see any third-class passengers on deck at that time? A. If there were any up they were not on our deck. We were on the spar deck.

Q. Where are the third-class passengers' quarters? A. In the between decks.

2400 Q. When they are up, to be about, do they come up on the spar deck? A. (English) Never.

Q. Did you go down to their quarters before retiring that night? A. Yes; that is the important part of my rounds.

Q. Did you find any of the third-class passengers up at that time. A. I don't remember.

Q. Could you, in passing along the main or spar deck, see down into the first-class saloon? A. No.

Q. Did you go into the first-class saloon in making your rounds? A. Yes, through, from one end to the other.

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Q. Mr. Cammeau said that he deposited $5,000 with the purser of the steamer in bills and specie, and that he took a receipt for it, and that the receipt was lost in his personal effects. Will you state what you know, if anything, about that? 2401

Mr. Benedict objects.

A. That is not possible, because Mr. Cammeau said before me on the *Cromartyshire* that he had saved his skin, and that was all he had with him. We were talking together, each one was saying what he had lost.

Q. State whether or not, if such deposit had been made, it would pass through your hands? 2402

Objected to.

A. (English) Yes.

Q. Was any such deposit as that made with the purser? A. No.

Q. I show you a letter, purporting to have been written by Mr. Edward S. Brownson, Jr., an attorney and counselor-at-law, 120 Broadway, New York City, dated March 16, 1901, in which it is stated , among other things, that "I understand, however, that the assistant purser counted out the money and that Mr. Cammeau can prove to your entire satisfaction just where the money was drawn from in this city, and that he took the same on board with him." Please state whether or not Mr. Cammeau delivered to you the sum of $5,000 in bills and specie, or any other amount, on the voyage of the *Bourgogne* in which she was lost? 2403

Objected to for the reason that stating the contents of the alleged letter in the question is improper; such letter not being put in evidence, the subject matter of it is immaterial, Mr. Brownson or Mr. Cammeau not being represented.

2404 Mr. Jones: Counsel for the petitioner has been made to understand that the two counsel present now do not represent Mr. Cammeau.

Mr. Jones: I offer in evidence the letter.

Objected to as immaterial and incompetent. The letter is marked, subject to objection, Petitioner's Exhibit 28 of this date. (Page 1211.)

Q. (Read to witness.) A. I say once more that he has deposited nothing with me.

Q. Do you know whether he deposited anything with the purser of the ship? A. (English) I am
2405 sure he did not; nothing; I have already explained that nothing could be deposited with the purser without passing through my intermediary, because the third-class passengers are always in communication with the person who has charge of the between decks, and he is immediately under my orders.

Q. Do you remember the collision itself? A. Perfectly.

Q. Were you asleep or awake? A. (English) Awake.

Q. Were you in your cabin? A. (English) In my cabin.

2406 Q. What first attracted your attention to the collision? A. I was thrown out of my bunk by the shock; I had just been waked up and I still had my feet on the edge of the bunk.

Q. What time had you been waked up? A. (English) Five o'clock.

Q. Why were you waked? A. To assist at the calling of the waiters.

Q. Did you feel more than one shock of the collision? A. Yes; several.

Q. Were they in rapid succession? A. There

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was one violent shock, and then afterwards as if a 2407
body was raking along the side.

Q. Were these shocks in close succession, or at what intervals were they? A. There were very short intervals between them.

Q. What did you do when you felt these shocks? A. I put on some clothing and immediately went up on deck to the door, and then I saw a fog there; I then went back down into my cabin to dress myself fully, and after that I went to where the purser was.

Q. Go on and state what happened and what you saw? A. The purser sent me to get all papers which were in my room. 2408

Q. In the meantime had the vessel taken a list to one side or the other? A. Yes; a very great list.

Q. Which side? A. To starboard.

Q. Go on and state what happened? A. He then sent me to get the balance of the documents that were with the ship's writer. His room was altogether way forward and mine was way aft. I met him in the passageway. He was coming and bringing his papers. We got the box ready and the purser sent me then to go into every one of the second-class cabins and wake up the people and tell them to put on their life-belts and come out. He did the same thing for the first-class passengers with the head waiter. I then went up on deck and 2409
went to lifeboat No. 4. I found there the first and third lieutenants, Mr. Rempler and Mr. Delange. They were giving instructions and orders as to getting out those boats, but without being able to succeed on account of the enormous list that the ship had. At the same time Mr. Rempler went to the other boats which were further aft; also giving instructions and orders. When we saw that our efforts were in vain those two officers went down below and went forward, and I don't know what be-

2410 came of them; I didn't see them again. I went back to my room, going around on the side of the vessel where the collision had taken place. I saw there in one of the rooms, the walls of which had been smashed in, a lady who was wounded and asked me to go and get the doctor, saying that her leg was broken. When I got in my room I found water in there and I didn't have time to take any of my effects, money or anything else. I then went back to the neighborhood of the bridge, and I called out to the commander these words: "Eh bien, commander," and he replied, "Allez desbrouillez-vous." The second captain, Mr. Dupont, was on the bridge
2411 at the same time, and the purser, Mr. Durand. We three jumped overboard; those two gentlemen jumped over on the starboard side and I jumped overboard on the port side. I got overboard, aiding myself by the tackles of boat No. 2. Within three minutes at the most after that the ship disappeared. I was drawn down by the suction and only came up a few seconds after. I then swam for three-quarters of an hour, about, and easing myself with a life-belt. I then got on to the keel of a boat which was capsized. We were about twenty-seven people on this boat, three of which were women. We helped them for half an hour or so to hold on there, and finally our strength gave out. When
2412 there were only eight of us remained of these twenty-seven, the others having gradually dropped off, we tried to turn the boat over. We succeeded in turning it over five times, and five times it capsized again. We finally managed to get two oars and keep the head of the boat up to the sea. The boat was then right side up, but full of water, and we were up to our necks in the water, but seated in the boat. One of the passengers and myself rowing, Mr. Baccarat; one of our sailors, named Gendrot, who had been on board of the English

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ship helping repair the damages to her sails and rigging, was one of those who came back after us. He had charge of the boat which came to save us, and two other boats and a raft and the people who were on those; and after that we got on board the *Cromartyshire*. About two hours after that we left on board the *Grecian*. 2413

Q. And landed where? A. At Halifax, two nights and one day after, at eight o'clock in the morning.

Q. How long had you been awake before the collision? A. (English) Ten minutes.

Q. Were you wide awake? A. Completely.

Q. Did you notice whether or not the beating of the engine indicated a reduction of speed? A. I noticed that we were not going very fast and that the siren was blowing. For that matter the siren had been blown quite a number of times and towards half past twelve, at the time I turned in. But I am unable to say at what speed we were going. 2414

Q. It has been stated by one of the witnesses in this case that the *Bourgogne* didn't reduce her speed in a dense fog. What do you know about that, if anything? A. In the mess room I always heard it said that we slowed down whenever there was fog; that frequently annoyed them because in that way they missed the tide when they arrived at Havre; they missed high water. 2415

Mr. Benedict objects, and moves to strike out the answer as incompetent.

Q. Did you have any means of determining whether such reductions of speed were actually effected? A. Yes, it is very easy; I can count very easily the number of revolutions the engine is making. As to the rate of speed I can't speak positively, but I can easily tell how many turns of the

2416 screw are being made, sixty or seventy, or whatever it is; from hearing the deck officers and the engineers talk of those matters you finish by getting some experience on that subject.

Q. Did you ever count the revolutions of the engine? A. Yes, I have, but I didn't that day. The chief engineer, Mr. Dalidot, had shown me very carefully the engine and all its parts; this was one of the first steamers on which I had been.

Q. State the lowest number of revolutions that you can recollect the *Bourgogne* made at any condition of fog at any time? A. I have no recollection of that.

2417 Q. Did you make a visit to the ladies' saloon after the collision? A. Yes.

Q. Did you find anybody there? A. No, the side was all smashed in.

Q. Did you see the injuries that the *Bourgogne* sustained by the collision? A. All that we could see on the exterior, yes, above the water.

Q. Describe them in a general way? A. In the cabin, which was next to the ladies' saloon, the port hole was torn out, the wall of the ladies' saloon was smashed in, and up above that the rails and the boats and everything there was demolished. My idea is that there were at least two boats entirely destroyed. That is about all I saw in the

2418 way of damages.

Q. About how long was the break in the side of the *Bourgogne?* A. From three to five meters.

Q. Did you see the *Cromartyshire* after you came on deck? A. No, I saw some wreck stuff floating on the water, and when I asked the second captain as soon as I came on deck what it was that had run into us, he said he thought the ship that we had met had gone; it had collided with us and had gone; gone along on her way. It has been stated, I understand, that some of the passengers had changed

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their class on the way; they had changed their class 2419
from third to second class, and *vice versa;* that has not been done. Nobody has changed from one class to the other, because the second class was more than full; even some of the second-class passengers slept in bath tubs. There was a Turk who wanted to go in the second class, and offered to pay any price, and he was refused absolutely; he offered to pay any price.

Q. Did you see anything of any Austrian or Hungarian sailors who were third-class passengers, or passengers of any class, seizing one of the lifeboats? A. (English) Yes; I saw something of it.

Q. Tell us what you saw? A. I saw a group of 2420
men whom I learned later were Austrian sailors take possession of a boat which was way aft on the ship, and get her overboard rapidly, and separate themselves from the ship, in spite of the efforts of a few sailors, who were there, and who tried to stop them. I think this boat left with some fifteen men in her. She might have taken a great many more.

Q. What lifeboat did you succeed in getting into? A. I only got up on one, on the keel of one of the boats.

Q. Do you know the number of the boat? A. (English) Oh, no.

Q. How did you afterwards get on to the *Cro-* 2421
martyshire? A. There was a lifeboat took us off from our capsized boat, and carried us to the *Cromartyshire.*

Q. Where did you first meet this Mr. Cammeau? A. On board the *Cromartyshire.* As soon as I could I wrote down the names of the passengers, in order to send telegrams. Mr. Deprez, one of the engineers, assisted me to write the names and prepare the telegrams that we wished to send to Halifax. For that matter, I still have that list at home.

Q. Mr. Cammeau states in his testimony that

2422 whilst he was a third-class passenger he paid something extra for a better room, and a Mr. Liebre, who has also testified in this case, stated that he was transferred from the third class to the second class. State whether or not those statements are true. A. I have already stated that nobody had been changed from the third to the second class, because the second class was already full, and I have cited the case of the Turk.

Q. What else did you see of this Mr. Cammeau on the *Cromartyshire* and on the *Grecian*, and what did you hear him say and see him do? A. I heard him saying insolent things to one of the engineers,
2423 Mr. Laisne, and myself and Mr. Deprez and Mr. Le Bourch interposed ourselves in order that the matter shouldn't go any further. During the few hours that we were on board of this ship he was essentially disagreeable, trying to get up discussions about the food and what they were giving us, and other subjects.

Q. The food given you on the *Grecian?* A. Yes; they had given us some blankets on board the ship, and he complained that everything had been given to the crew, and nothing to the passengers. The fact was I assisted myself with the purser of the *Grecian* in distributing everything.

2424 Q. Did you see anything done by the crew of the *Bourgogne* on the *Cromartyshire?* A. When I got on board everything was done, but they had been assisting. Captain Henderson told me that himself.

Q. Did you see anybody beside Captain Henderson on the *Cromartyshire*, of that vessel? A. I talked with the wife of the captain, and the cook, who was a Frenchman; he was the only one who spoke French on board; I don't know whether he was a Frenchman; he spoke French. I think he was a Canadian.

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Q. Was anything said by the captain or by the captain's wife, or the cook, in the presence of the captain, about the collision? 2425

Objected to as incompetent and immaterial.

A. Yes; I was speaking English with the wife of the captain, and she told me that for a long time she had heard the siren of the *Bourgogne;* that they didn't reply because they knew very well that theirs was too weak; that they were waiting until they got nearer before using theirs. But, being afraid that something might happen, she had got her two little girls dressed and had put them into one of the lifeboats; and while she was telling me this her husband came in and told her to stop talking, that it wasn't her business. 2426

Q. What did she say in the captain's presence about the fog horn of the *Cromartyshire?* Give her own words as near as you can remember.

Objected to as incompetent, immaterial and hearsay.

A. I can't give the precise instant at which the captain came in; it was at the end of the phrase where she was saying "We were waiting to answer the siren, because we were too far away," that the captain came in.

Q. Did she say anything in the presence of the captain of the *Cromartyshire* about the fog horn of the *Cromartyshire?* A. Yes; that was when her husband told her to stop talking. 2427

Q. Give, as near as you can recollect, exactly what she said in the presence of the captain, in regard to the fog horn of the *Cromartyshire?*

Objected to as having already been stated that the captain came in at the end of the sentence where she was saying that they were waiting to answer the siren because they were too far away.

2428 A. I could not exactly say when the captain came in the room when the wife was speaking; I can't say upon what precise word of his wife the captain came into the room.

Q. What was she saying, when the captain came in, about the fog horn of the *Cromartyshire?*

Same objection, and also as leading.

A. She said that they heard—it was a whole conversation that took place—I will repeat the whole conversation if you like.

Q. Well, repeat the conversation.

Objected to as incompetent, immaterial, and
2429 hearsay.

A. The wife of the captain said that for a long time they had heard the siren of the *Bourgogne,* and that they didn't reply because they knew that their fog horn was weak, and they waited until they got nearer before using it. It was about the time that she was saying that they were "waiting" to use theirs that the captain came in; approximately. And then the captain said "Stop talking; that is none of your business." She was quite excited.

Q. How did you reach Halifax finally? A. We arrived on board the steamer *Grecian.*

Q. Did the *Grecian* take the *Cromartyshire* in
2430 tow? A. Yes.

Q. Did you have any fog on the way? A. No fog.

Q. Did you ever see or hear the sound of the fog horn of the *Cromartyshire?* A. I saw it, but I never heard it.

Q. Where did you see it? A. (English) On the *Cromartyshire.*

Q. What was the name of the purser of the *Bourgogne?* A. Durand.

Q. Was he saved? A. No; drowned in the collision.

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CROSS-EXAMINED BY MR. BENEDICT: 2431

Q. Were you examined as a witness in England in the trial between the owners of the *Cromartyshire* and the owners of the *Bourgogne?* A. No.

Q. Were you in England at the time? A. No.

Q. Did you know or hear of the trial of that case in England? A. I know that there was a trial there; but whatever was said there has never been communicated to me.

Q. Where were you when the trial took place? A. On the Mediterranean; I was purser.

Q. In the employ of the company? A. (English) Yes.

Q. In what ship? A. I don't know just when 2432
the trial was; I was on board the *Ville d'Oran,* the *Ville de Tunis,* and the *Moise.*

Q. How soon after the loss of the *Bourgogne* did you go to these Mediterranean vessels, any of them? A. A year after.

Q. During that year what were you doing? A. I was assistant purser on the *Champagne.*

Q. Running between Havre and here? A. Running between Havre and New York.

Q. How did you come to change from the *Champagne* to the Mediterranean vessels? A. I was advanced from assistant purser to purser.

Q. You were advanced by the company? A. Yes. 2433

Q. Have you been on that Mediterranean line ever since? A. Yes, except now; I am in the West Indies service now.

Q. Since when? A. A couple of weeks; I was appointed to go out to the West Indies a couple of weeks before the telegram came for me to come here; I have been promised that I shouldn't have to come here.

Q. Were you examined in reference to the loss of the *Bourgogne* at Havre? A. Yes; by Captain Aubert.

2434 Q. Did any one connected with the company ever ask you anything about the facts of the collision? A. Never.

Q. And you never told anybody connected with the company about the facts of the collision, as far as you knew them? A. Yes; certainly.

Q. With whom did you speak? A. Mr. Pereire, the president of the company.

Q. Who else? A. Nobody else.

Q. Nobody else? A. Nobody else; we were three there present; there was the president, the manager, and his secretary.

Q. Who was the manager? A. Mr. Dorigny.

2435 Q. Who was his secretary? A. I don't know his name.

Q. Was what you said at that time taken down by the secretary, written down? A. No; I gave to the company a report; I made a written report to the company.

Mr. Benedict: I call for that written report, or a copy of it.

The Witness: I haven't it.

Mr. Benedict: What does the counsel say?

Mr. Jones states that he has not the report.

Q. Have you seen that report since you made it?

2436 A. No.

Mr. Jones states that he hasn't that report and has never seen it nor heard of it until a few moments ago.

Q. Did you make that report before you were examined before Commander Aubert? A. That was the report that I gave to Commander Aubert.

Q. Do you mean to say that Commander Aubert asked you no questions? A. He had me recount to him the story, and made no objection to it.

Q. You have said that you made a report. Did

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you mean that you made a written report or a ver- 2437
bal report? A. I read him the report which I gave to the company.

Q. Which you had made? A. Yes.

Q. That was a written report, was it? A. Yes; it was a written report.

Q. Did he ask you no questions outside of the written report? A. (English) I don't remember that.

Q. When you were talking with the president, Mr. Pereire, and the directors, was that report present? A. I don't remember.

Q. Did you give a new report to him, or did you make that same one? A. I suppose he had already 2438
read the report and he asked us whether we were well, and in good health, and how we were generally.

Q. Then do you say that no questions were asked you in the interview with Mr. Pereire and Mr. Dorigny, in reference to the facts of the collision? A. Some slight questions, but nothing special.

Q. What were you questioned about? A. He knew one of the lady stewardesses, and he wanted to know what she had done, what had become of her.

Q. Anything else? A. (English) This happened three years ago; I don't remember.

Q. Did you ever tell to anybody, before to-day, 2439
this conversation which you say you had with the wife of Captain Henderson? A. Never; I haven't spoken of the details of the disaster.

Q. Have you ever spoken to anybody about the conversation which you say you had with the wife of the captain of the *Cromartyshire?* A. Since the loss of the *Bourgogne* I have never given anybody any details, except such as were printed in the papers, and that everybody knew.

Q. Repeat the question, and please answer my question just exactly as I put it. Don't answer

2440 anything else, but answer my question (repeated). A. I repeat the same; I give the same answer; that since that time I have never spoken of the details of this case to anybody.

Q. (Repeated). You must answer my question? A. (English) No, I don't answer your question.

Q. You must answer my question? A. (English) No, I don't answer your question.

Q. You will not answer that question? Is that what you say? A. I repeat what I said before, that since the accident I have never spoken of the details of this accident to anybody, because my opinion was that they were very serious things and shouldn't be
2441 talked about. They should only be spoken of under oath.

Mr. Benedict (to interpreter): Repeat the question, and put it to him just as I put it now.

The Witness: I have never spoken of this conversation with the wife of the captain before to-day, for the reason that nobody has ever questioned me with regard to the details of the accident.

Q. Ah; now you have answered it. Were you not questioned before Commander Aubert? A. No, I simply recounted the general details of the affair.

Q. And you never were questioned by any one
2442 connected with the company in reference to the details? A. Never; I have been asked whether I was cold, and whether I was saved.

Q. Have you talked, never, with counsel of the company, here, or anybody in this office with reference to the details of the disaster? A. No.

Q. Or with either Mr. Deprez or Mr. Laisné? A. For that matter I have never been with those gentlemen since the accident.

Q. How many times have you attended while witnesses were being examined here in this office? A.

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I think this is the second time; I am not sure 2443
whether this is the second or the third time.

Q. When you were here one of those times you saw Mr. Cammeau here? A. Yes; once.

Q. Did you know that there was a suit brought by the owners of the *Cromartyshire* against the owners of the *Bourgogne* to recover the damages occasioned by the collision? A. I know there was a trial in England, but I thought it was the English families of the victims.

Q. Did you not know that there was a suit brought in England against the owners of the *Bourgogne;* did you not know that before the trial of the suit? A. I thought that probably the accident to 2444
the *Bourgogne* would bring on suits, but I didn't know in what courts these would be brought, or by whom; I thought it likely.

Q. Did you think it was of any importance to the *Bourgogne* in that law suit as to how or when the horn of the *Cromartyshire* was blown? A. Yes, but as I had never been questioned on the subject I had nothing to say.

Q. Then you mean to tell us that, although you understood that the question of the horn of the *Cromartyshire* was a matter of importance for the *Bourgogne* in litigations arising out of this collision, that you never mentioned having had this 2445
conversation with the wife of the captain to anybody connected with the company? A. Yes; I repeat it.

Q. Can you explain, if you never told anybody of that conversation, how it was that you were asked to-day with reference to the happening of such a conversation? A. I don't know; I have never spoken of this matter to anybody. This is the first time I have ever been questioned, and I answered; I answer the questions that are put to me.

Q. When you made the report that you did, you

2446 understood, did you not, that there would probably be litigation about the collision? A. Yes.

Q. Did you put in that report any narrative of this conversation which you say you had with the captain's wife? A. No, because the report that I was called upon to make was one of the details of the disaster; I didn't make any mention of this conversation; I thought it was a very serious matter.

Q. You thought it was a matter of great importance for the interests of the company? A. (English) For the company and the *Cromartyshire* also.

Q. And therefore you didn't mention it? A. (English) Yes.

2447 Q. And therefore you didn't mention it to anybody? A. (English) And therefore I didn't mention it to anybody.

By request of the witness, the question is translated by the interpreter into French.

The Witness: Yes; because as this report was one which might have been lying around on desks, I didn't think this was a proper thing to be stated so that everybody could see it.

Q. Didn't you think that it was a thing that the owners of the *Bourgogne* would be very glad to know? A. I hoped—as I am not up in technical matters, I hoped that nobody would ever question
2448 me at all.

Q. (Repeated.) Didn't you think that it was a thing that the owners of the *Bourgogne* would be very glad to know? A. Yes; that is the reason that I didn't like to write it down. I thought it had very great importance.

Q. Were you the principal officer that was saved from the *Bourgogne?* A. No; there was an engineer; the chief of the watch.

Q. Who was that? A. Mr. Laisné.

Q. Do you say that Mr. Laisné was the chief of

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the watch? A.Mr. Laisné was chief of the watch. 2449

Q. Chief of the watch that was on duty at the time, do you mean? A. He was a chief of watch.

Q. Do you know whether Mr. Laisné ever made any report? A. I don't know.

Q. Next to Mr. Laisné you came, in the rank of officers, I mean, who were saved? A. It is not the same thing at all.

Q. Was there anybody of a higher grade than yourself, among the saved, except Mr. Laisné? A. No; the boatswain was the highest man in rank, nearer to the master of the ship; Mr. Laisné and myself stand about on the same level as to rank.

Q. Whose duty was it, under the law, to make 2450
the report in reference to the disaster? A. The purser is the one that is in the habit of drawing up the documents.

Q. And was it in accordance with that habit that you drew up and make this report? A. Yes.

Q. Where do you say, on the *Bourgogne*, your office was? A. It was where the stairs of the second-class passengers go down.

Q. On which side of the ship? A. The port side; it was an inside cabin without any port hole.

Q. You say that you turned in that night at half past twelve, I understand? A. Yes; the same as every day.

Q. And I understand you to say that you heard 2451
the siren blow before you turned in? A. Yes.

Q. How long before you turned in did the siren blow? A. I heard a few blasts of the siren before I turned in; but the fog didn't appear to be very thick.

Q. How long before you turned in did you hear those blasts of the siren? A. At the time that I was making my rounds; about midnight or a quarter of twelve; I didn't hear them before that.

Q. Did the siren continue to blow until you

2452 turned in? A. Yes; I think so; I went to sleep and I am so used to it that I didn't hear it.

Q. But before you went to sleep? A. Yes; before falling asleep I heard several blasts of the siren.

Q. But from the time that you heard the first blast did it continue until you went to sleep? A. Yes; but not in such a rapid way as sometimes; sometimes it is made every thirty seconds; there is an automatic attachment there; it works automatically when it is very foggy.

Q. Do you mean to say that the siren is not worked by a man? A. Not always; it is not al-
2453 ways made to work by a man's hand; there is an automatic attachment; I have heard several of the gentlemen say so.

Q. Did you ever see that automatic attachment? A. No; it is not my business.

Q. If one of the men has sworn that he was blowing it with his own hands, you don't mean to say that it wasn't so? A. I have been told plenty of times that there was an automatic attachment; now whether that was going or not I can't tell you. If this man said so I can't pretend that the contrary was the case; but I know there was this automatic attachment, and whether it was going or not I can't say.

2454 Q. Now, during this time that you have spoken of, did you notice any reduction of speed of the *Bourgogne;* this time just before you turned in? A. I didn't pay any attention to that.

Q. Then, as far as you know, the *Bourgogne* was going at full speed during that time? A. I can't answer that, because that was none of my business, and I don't know what was occurring.

Q. As far as you know? A. I don't know anything about the speed of the ship.

Q. At any time? A. At any time; I think some-

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times about it inside of myself; but I never say anything about it. 2455

Q. Did you ever count the turns that the engines of the *Bourgogne* made? A. Sometimes.

Q. When do you remember to have counted them? A. I recollect that I did it; but when I can't remember.

Q. Do you remember whether you had done it during this voyage? A. Yes, certainly; as I only made three voyages, if I hadn't done it that voyage probably I wouldn't have done it at all.

Q. When had you made those three voyages? A. Since the 12th of April of that year.

Q. Can you now remember of any time on either of those voyages when you counted the turns? A. I think on the first voyage when I went below with Mr. Dalidot and he explained the engine to me; I think he showed me how to count the number of turns, and I think we did so at that time; the other times, whether it was the second or third trip or whether we were coming or going, I don't recollect. 2456

Q. That time you went into the engine room with Mr. Dalidot; did you ever go there again? A. No; but I have been down in their mess room frequently to talk with them.

Q. Do you remember how many turns the engine was making when Mr. Dalidot showed it to you? A. No. 2457

Q. Do you remember any number of turns that you ever counted of the engine at any time? A. No; he showed me how to count them, and I counted them, but I don't remember how many I counted.

Q. What did he show you as to how to count them? A. He showed me how to count them.

Q. How did he do it; that is what I ask? A. You take your watch in your hand and listen to the strokes; I did it out of curiosity simply.

Q. Do you not know that there was a blackboard

2458 in the engine room on which the number of turns of the engine are entered? A. I didn't know it at that time; I do now know that there was, because I have been sailing a good deal more since that time.

Q. Do you know what the run of the *Bourgogne* was the first day that she left New York? A. No; I have known it, but I have forgotten it.

Q. Wasn't the run posted up; was it not the habit to post up the run every day at twelve o'clock? A. Yes.

Q. Did you see it the first day? A. Yes; they made pools on it, of course.

Q. But you don't remember what the number of
2459 miles run was? A. No.

Q. Were there any pools made after noon of the first day out, after noon of Sunday? A. No; they were made about eleven o'clock in the morning, just before the position is known at noon.

Q. You said that there were three persons with you on the spar deck before the collision? A. Yes, sir.

Q. Who were they? A. Mme. Juliet Cicot, and Mr. and Mrs. Tacot, or a similar name; I think that is the name.

Q. What class passengers were they? A. Second.

Q. All three? A. All three.

2460

By Mr. Jones:

Q. Were they saved? A. No.

By Mr. Benedict:

Q. Do you know whether Mme. Cicot is dead? A. Yes (English). I know she is dead.

Q. You stated that the third-class passengers were in communication with a person who was in charge of the between decks; who was that? A. (English) I don't remember.

Q. What was he? A. The chief of the between 2461
decks.

Q. Was he saved? A. I don't think he was, but I don't recollect.

Q. When you got up, as I understand it, you went up on deck? A. (English) Yes.

Q. How long did you stay on deck? A. I didn't even go out on deck; I only looked out to see whether there was any fog; I only stuck my head out to see what was the matter.

Q. Then what did you do after that? A. I went down and dressed myself.

Q. How long did that take you? A. Five minutes.

2462

Q. Then where did you go? A. Then I went to the purser's room.

Q. Was he there when you got there? A. (English) Yes.

Q. What passed between you and him? A. I asked him what I should do; and he told me to go and collect the papers that were in my room, the bills of lading, etc.

Q. Did you go and get them? A. Yes, and brought them to him.

Q. How long did it take you to get those papers together and get back to the purser's room from the time he told you to do that? A. Perhaps four minutes; time to run from one end of the ship to the other; inside.

2463

Q. And then he told you, as I understand it, to go and get the papers from the writer? A. (English) Yes.

Q. How far did you go before you met him? A. Twenty-five or thirty meters.

Q. And it was after that, was it, that the word was sent to the second-class passengers to get up? A. Yes; the whole thing might have required eight

2464 or ten minutes after the accident; hardly eight or ten minutes after the accident.

Q. How long do you say it was after the collision before the vessel sank? A. From a quarter past five to ten minutes to six; I am sure of that, because my watch stopped then.

Q. Stopped at ten minutes to six? A. Yes, when I jumped overboard; I don't think it could have kept on going after that.

Q. How long a time do you say passed between the time that you were sent to call up the second-class passengers and the time that you saw the captain on the bridge? A. I saw the captain on
2465 the bridge four minutes before the *Bourgogne* disappeared. You have only got to make the calculation.

Q. Well, make the calculation and tell me. (Witness does so.) A. I think I went and woke up the pasengers about twenty-two minutes past five, and that as I went on deck about four minutes before the vessel sank, it must have been fourteen minutes of six that I saw him on the bridge; I think it must have been twenty-three minutes.

Q. So that you think it took you twenty-three minutes to wake up the second-class passengers. A. No, I don't; that isn't it at all. You don't ask me, but I tell you that I saw the captain a good
2466 while before that.

Q. How many minutes do you think it took to wake up the second-class passengers? Eight minutes at the outside.

Q. What were you doing after that, between that time and the time that you saw the captain on the bridge, as you say? A. After that I went and tried to help get out a boat; I have told you that already. And then I went back a third time into my room.

Q. Did you go back into your room after having

called up the second-class passengers? A. Yes, after I found we couldn't get the boat in the water. 2467

Q. You said that you went to boat No. 4; how long were you at work at boat No. 4? A. Eight or ten minutes; I don't know exactly. I see that there is an effort being made to show that I took up more time in doing these items than in doing the whole thing together; you can't make me say that. After you get everything added up you have got to make forty minutes.

Q. Did you look at your watch at the time of the shock? A. No.

Q. You were called at five o'clock, you say? A. Yes. 2468

Q. How do you know it was five o'clock? A. Because I am always called at five o'clock.

Q. When you were called did you get right up? A. No, not immediately; I rubbed my eyes and put on my stockings.

Q. And that was all you put on before the shock? A. Yes; I was sitting on the edge of the berth putting on my stockings when the shock came.

Q. You don't mean to say that it took you fifteen minutes to get your stockings on, do you? A. No.

Q. Then, if you were called at five the shock was not at fifteen minutes past five? A. Yes; I was stretching, waking up; yes; I know what I do; I have been doing that every day for three months. 2469

Q. But you say you did not look at your watch at the time of the collision? A. When I went up where the second-class passengers were I go by a clock, and I looked at it then, and that was the time that I went up to see whether there was any fog.

Q. What time do you say it was by that clock? A. Ten minutes or thirteen minutes or fourteen minutes or fifteen minutes past five; between 5.10 and 5.14.

2470 Q. How long do you expect to stay here in New York? A. I would like to go right away, next Thursday; my ship is waiting for me; I will take one of the Bermuda steamers.

Q. When do they sail? A. Thursday.

Q. Did you know the passenger Baccarrat? A. We were together for quite a long while, but I don't know whether I would recognize him again or not.

Q. When did you see him last? A. When we arrived in New York after the disaster.

Q. Did you see him at the French Consulate in New York? A. No, I wasn't questioned by the French Consul here; I never have been questioned.

2471 Q. Did you know Mme. Cicot before that voyage? A. Yes.

Q. How long? A. A month, perhaps; she had been presented to me the voyage before that, as she was intending to go with us.

Q. Had she surrendered the ticket to you on this voyage? A. Yes, I think so; as much as I can recollect. I think she gave me some letters or papers to keep for her; some little packages, veils or something of that sort; it was some little delicate things of a lady's toilet; some fragile things that they didn't want to leave in their rooms.

Mr. Benedict: I don't want to ask this witness
2472 any more questions, but I suggest that we adjourn until to-morrow morning, in order that Mr. Cammeau's counsel, Mr. Brownson, may have an opportunity to be present.

Counsel for petitioner making no objection to this, the hearing is adjourned to to-morrow, Tuesday, November 19th, at 2.30 P. M.

NEW YORK, November 19, 1901. 2473

Met pursuant to adjournment.

Same appearances as heretofore noted.

EMIL HENRI SCOL, examination continued:

By Mr. Jones:

Q. Can you recollect, either from your own memory or by referring to any memoranda, the name of the chef d'entrepont (the man in charge of the between decks)? A. Yes, I remember; Mr. Vogt.

Q. What were his general duties? A. He looked after the distribution of the food in the between 2474
decks; he showed the emigrants where to put themselves; he put the people of each nation together.

Q. Do you know whether he is living or dead? A. He is dead; he died in the accident; he was drowned in the disaster.

The witness states that at about eleven o'clock that night he met the electrician on the deck, and he remembers now what his name was, the electrician being the one who made his rounds at the same time as the witness, to see that all the lights were put out.

Q. What was his name? A. Mr. Deprez; I intro- 2475
duced him to the three people that I mentioned as having been talking with on the deck; also Mr. Delange and Mr. Rempler in my presence cut the tackles of the boat that couldn't be got overboard; so that in case they went down the boat might float; it was, thanks to their care in that particular, that I was saved.

By Mr. Benedict:

Q. What was the number of the boats that you speak of? A. There were three boats; Nos. 4, 6,

2476 and 8, which were on the starboard side; I saw them cut them.

Q. Did you wear any uniform that night that you speak of? A. Yes, I always wore a uniform, and Mr. Deprez had a blue suit with a cap with gold lace on it; that was the engineers' uniform.

By Mr. Jones:

Q. Are you sure of their being on the starboard side? A. Yes; they were on the side where they couldn't be got out on account of the list of the ship, and therefore it must have been on the starboard side, because the collision took place on the
2477 port side.

Q. Are you certain about that? The right hand or the left hand side? A. I am sure of the numbers of the lifeboats, 4, 6, and 8.

Q. Were they on the right hand or the left hand of the ship, looking forward? A. I can't—yes, on the starboard side.

Q. What lifeboat were you attached to? A. No. 4; that was the captain's boat.

Q. Was that boat, No. 4, on the side towards which the ship took a list? A. No; it was on the side opposite; the boats of which I speak were on the side of which—were opposite the side that was
2478 listed over. Those were the ones which couldn't be got into the water on account of the list of the ship.

Q. On which side of the ship was your room? A. On the side on which she had the list; consequently the boats of which I speak were on the side opposite from my room.

Q. When you say that these boats were on the side opposite the list, what do you mean by "the list," the list downward or the list upward? A. They tried to get these boats out and on account of the list of the ship they swung in so that they touched the side of the engine room, and therefore

couldn't be got out; they swung in towards the 2479
interior.

Q. Were these boats, that you have spoken of as having the tackles cut, on that side of the ship? A. Yes; those were the boats of which the tackles were cut; and Mr. Rempler mentioned why they had the tackles cut. I asked Mr. Rempler why he cut those tackles, and he said, "Because the boats will come to the surface."

By Mr. Benedict:

Q. You didn't understand why he was cutting the tackles then? A. No; I did not.

Q. Which boat were you at when the tackles were 2480
being cut? A. No. 4.

Q. Was Mr. Rempler at that boat? A. He was at Nos. 4 and 6; he was overlooking both of the boats.

ALBERT GAIDOT, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you reside? A. In Paris.

Q. Were you a passenger on the *Bourgogne* when she foundered after the collision with the *Cromartyshire?* A. Yes, sir; I was. 2481

Q. Do you remember the night of the collision? A. Yes, sir.

Q. What time did you go to bed? A. About midnight.

Q. Did you go to sleep? A. Yes, I did.

Q. Did you sleep after that all the way to the time of the collision? A. I slept till about five o'clock in the morning.

Q. What occasioned your waking? A. The shock I heard made me wake up, and then I dressed

2482 myself and went on the spar deck and found all the people on the left side of the steamer, the passengers and sailors, who were willing to get a boat ready to put out.

Q. Did you see the injuries done to the *Bourgogne* by the *Cromartyshire?* A. Oh, no; I didn't go to look out; I didn't take care for that; I just took care to save myself. I saw at once there was some lifeboats broken; the bow of the vessel broke up out of the spar deck.

Q. The bow of the vessel? The *Cromartyshire?* A. Yes, the *Cromartyshire;* and then I tried to get in the lifeboat, you know, but there were so many
2483 people on the left side that I couldn't get in the boat because the sailors were willing to get the boats ready, but the passengers were going on the boats, and didn't give the sailors time to get the boats ready. After I saw that, I went on the right side of the vessel, on the starboard side; and then I got my knife and started to get lifeboat No. 9 ready; and then some sailors came and some passengers, you know.

Q. Sailors of what vessel? A. Of the *Bourgogne;* the *Bourgogne's* sailors, you know; and we had been working altogether to get the lifeboat No. 9 ready. Besides that a man called me and said Come to No. 7. I didn't care for that, so I went
2484 into the next boat, No. 9, where I had been working for about a quarter of an hour or twenty minutes; I don't know exactly. I saw those people get on boat No. 7, but the funnel fell down and smashed the whole thing; boat and passengers. There were many women and children in that boat, you know; and I think all of those people were sunk and killed. After the *Bourgogne* had taken a big list we tried again to put the boat No. 9 in the water, outside of the vessel; and then, when that boat was outside of the vessel, a good many people jumped on that

boat, and I just got time to jump myself in the 2485
boat; at that time the *Bourgogne* had so much list that the water was coming up on the spar deck; then we took out the oars and rowed to get away from the vessel, and a few moments after that I saw the *Bourgogne* going down; we were about 150 or 200 feet from the *Bourgogne* at that time; I can't say exactly, you know, but it looked like that to me. That is all I saw of the wreck.

At this point Mr. Brownson, attorney for Cammeau, enters the room.

Q. What is your business? A. I am a sewing-machine dealer in France. I do business with 2486
American firms here.

Q. Have you any experience as an engineer? A. Yes.

Q. You are an engineer by profession? A. Yes; I went to school in France and had all the schooling about that; I have been working here as an engineer also.

Q. How long after you were aroused, as you say, by the shock of the collision, was it before you got on deck? A. Just time to dress me up; the shock made me wake up and I was not so sleepy at that time, because at five o'clock it is time to get up, and I was not very sleepy at that time.

Q. Can you give me an estimate of the time by 2487
the watch? A. It was about five o'clock in the morning.

Q. Tell me the time between the time you were aroused by the shock and the time you reached the deck, in minutes or hours? A. I will say about ten minutes.

Q. Did you see the captain on the bridge when you came up? A. I saw him all the time till the *Bourgogne* went down; till she was going down.

Q. Did you see what the men were doing in re-

2488 gard to getting out the lifeboats? A. Yes, sir; I did.

Q. Describe what the men on the ship were doing with respect to lowering the lifeboats? A. They were working all the time to get the lifeboats outside; the first thing I saw when I went on the spar deck I saw the sailors working to get the boats out, and till the *Bourgogne* was going down I saw those people working.

Q. How were you finally saved? A. (Through interpreter) On the lifeboat; I jumped in the lifeboat and saved myself; No. 9.

Q. Who were in that boat with you? A. Some
2489 sailors, and some men from the engine room, and some passengers.

Q. Did you observe in your state-room, or after you came on deck, whether or not the steam valves of the *Bourgogne* were blowing off? A. No, they didn't blow off; there was no steam going out by the valve.

Q. What, as an engineer, did the fact that the valves were not blowing off indicate to you?

Objected to as immaterial and incompetent, no experience having been shown.

A. (Through interpreter) As showing me there was not much steam in the boilers.

2490 Q. What education or training have you had as an engineer? Be very precise about it. A. I have been in the College Chaptel since the time I was a small boy up to eighteen years old, and then I was in a supplementary school after that.

Q. Did you graduate there? A. Yes.

Q. As an engineer? A. Not as an engineer, because in that school they don't give an engineer a diploma, but at that time I went to another school and got a diploma there.

Q. What school was that? A. Les Arts et Metiers.

Q. Did you receive a diploma as an engineer at 2491
that school? A. Yes.

Q. Have you had any experience as an engineer? State what it was? A. For making drawings of machines and also how to run machines. I studied for the business that I am now in.

Q. Have you had any experience in steam engineering? A. Yes, sir.

Q. What experience have you had as a steam engineer? A. The experience of the men who run an engine. I can run an engine the same as an engineer.

Q. How was the weather when you got up on deck after the collision? A. It was very foggy; it 2492
was foggy.

Q. Did you see anything of the *Cromartyshire* at that time? A. No, sir; I didn't.

Q. Did you observe any confusion or disorder on board so far as the crew of the *Bourgogne* was concerned? A. No, so far as the passengers were concerned, they were excited. That was what stopped the sailors from getting the boats ready, you know, because instead of waiting till the boats were ready they were jumping into the boats and the sailors didn't get room enough to do the work.

Q. What time did I understand that you went to
bed that night? A. I should say about midnight. I 2493
didn't look at my watch; it might be one o'clock or half-past twelve.

Q. It was said here by Mr. Cammeau who was a passenger and has testified in this case, that there was a great deal of merriment and hilarity and more or less drinking in the saloon that night. Did you see anything of that kind? A. What time?

Q. Any time that you were up? A. No, I didn't see much. I didn't see much good time on board of the steamer.

Mr. Jones asks the witness to make his answer in French.

2494 The Witness (through the interpreter): I didn't see much of it.

Q. Did you notice whether the lights were put out in the saloon that night? A. About 11 o'clock they shut off the lights.

Q. Do you know whether the bar room and smoking room were closed that night? A. They were closed because I got a glass myself at 10 o'clock and before I went to bed there was no light in them.

Q. Did you see anything of any Austrian or Hungarian sailors taking possession of the lifeboat? A. Yes, sir; boat No. 11.

Q. What did they do in regard to that? A. They
2495 just—about a quarter or 15 minutes before the *Bourgogne* sank I saw the men—I didn't know who they were at that time—they just went to boat No. 11.

Q. Were they passengers or sailors of the *Bourgogne?* A. They weren't sailors of the *Bourgogne*, they were passengers, and they got that boat ready very quick. There were about a dozen, you know. They asked me to give them help, but I didn't do so because I was working on my boat myself.

Q. What boats were got out on the starboard side, if you know? A. No. 7 was broken down by the funnel, and No. 9 was all right and No. 11, too.
2496 There were about a dozen of men.

Q. Which side of the *Bourgogne* were these boats that you have described? A. On the right side, the starboard side.

Q. How many of those boats do I understand you to say were broken? A. By the collision, I think, about three boats were broken by the collision. I didn't see that it was exactly so, but it is what I think.

Q. How about the lifeboats on the other side? A. They were some of them turned upside down. Some of the ones they tried to get outside of the

vessel were just inside of the vessel, because the 2497
vessel had a big list and nobody was able to get the boats outside.

Q. How were the lifeboats attached to the deck? A. They are fixed with chains, and those chains are tied to the deck by cords. They set on some blocks of wood, a sort of a box.

Q. Did you see whether the chains were loosened and the blocks removed? A. Yes, they were; when they wanted to do it they did it, but it wasn't so before.

Q. As a matter of fact, were the chains that you speak of loosened within your sight; were they or were they not? A. When they were let go, yes. 2498
Ordinarily when there is nothing unusual the boats are on the deck. They are attached and the chains are made fast, and all they have got to do when they want to let them go is to do so. If these chains weren't made fast, then the least rolling of the ship would send the boat adrift.

Q. I understand all that. But will you please state whether or not you saw, after this disaster, when you came up, that the chains which are ordinarily used for holding the boats down were loosened? A. Yes; the boats that were got out, all of them, the chains were cast off.

Q. How about the chocks upon which they 2499
rested; what was done with them? A. As to the boat where I was, of which I am speaking, the ship had such a list that the weight of the boat weighed down upon these chocks and prevented their being capsized easily; but afterwards, yes; they were capsized.

Q. Did you see anything of any cutting of the ropes? A. Yes; I cut some myself.

Q. On which side of the ship was that? A. The right side. All that I say refers to the right side of the ship. I was on that side.

2500 Q. You were not on the left at all? A. I was on the left of the first boat. I saw so many people there that I didn't think there was any chance for me to escape there, and so I went to the right side, the side which was down near the water.

Q. It has been stated in this case by Mr. Cammeau that the davits were locked so that keys had to be got out? A. I don't know how they can lock a davit, you know. There is no key for that. They are held in each side by ropes, but there is no key. There is a chain and on the end of the chain there is a rope and you can cut it or loosen it.

Q. Did you observe that there was any difficulty
2501 in lowering the lifeboats that you saw on account of any paint on the ropes? A. (Through the interpreter) No, because they don't put paint on the ropes. They paint the other parts. I might state that sometimes I have seen the sailors make the drill with the boats before they started.

Q. When you say that there was no paint on the ropes, just state why, if you know, that in painting about lifeboats there was no paint on the ropes? A. (Through the interpreter) That is against common sense. They certainly wouldn't put paint on the tackles; if they did they wouldn't work.

Q. Did you notice whether the ropes attached to
2502 the lifeboats had canvas hoods?

The remaining answers of this witness are given through the interpreter.

A. There was canvas over the boats to keep the contents from the weather, but the ropes are not covered up with canvas.

Q. Who besides you were in the lifeboat? A. We were about forty-five when we left the ship, when the boat left the ship.

Q. Do you remember the names of any of the passengers or officers? A. No, I can't. There was

no officer in that boat. We picked up about fifteen 2503
people off from a raft. I wish to say that this figure that I have given, forty-five, may be out of the way, perhaps either way. We took thirteen or fifteen or seventeen off from the raft.

Q. What time did your boat reach the *Cromartyshire?* A. Half past eight or nine o'clock in the morning. I can't tell exactly, you know, because I didn't take my watch to see what time it was, but I think it was about that time.

Q. What did you see on the *Cromartyshire?* A. The first man I met was the captain of the *Cromartyshire.*

Q. Did you have any conversation with him? 2504

Objected to as immaterial.

A. Yes, he asked me where I came from. I told him I was on board the *Bourgogne*, the steamer. He didn't know what had happened to us.

Q. (Repeated.) A. He asked me "What happened to you?" He said he didn't know anything about it and wanted to know what had happened to us, for he said he didn't know anything about it. He didn't know whether it was a French or a Russian or a Swiss vessel or whatever he had run into.

Q. What else did he say to you? A. I said I had just come from the *Bourgogne*, which had just sunk. He asked me how it happened and all about 2505
it. I must tell you one thing. At the time of the collision he thought that we hadn't received any injuries to any extent; that we had continued on our course. We supposed that he had sunk. That created a confusion, because if we had known there was a vessel within a few miles of us a great many more people would have been saved. This was occasioned by the fog which was on the water.

Q. Who else beside the captain did you see on the *Cromartyshire?* A. His wife and children and a few of the crew of the *Cromartyshire.*

2506 Q. You were subsequently taken on to the *Grecian,* were you not? A. Yes, sir.

Q. How long after you got on the *Cromartyshire* was that? A. About ten or eleven hours. From about ten o'clock in the morning till about seven o'clock in the evening. Those figures are not exact, I wish to state. Nobody took out their watch to see just what time it was.

Q. Where did you, if at any time, make the acquaintance of Mr. Cammeau, whose name I have mentioned before? A. First on board of the *Cromartyshire.*

Q. Did he say anything to you? A. No; he com-
2507 menced to talk in a general way, and then I did have a personal conversation with him.

Q. State what the conversation was?

Objected to as immaterial, incompetent and irrelevant.

A. The French sailors were cleaning up the *Cromartyshire's* deck and getting the rigging straightened out, and he found occasion to say that the French sailors were not doing their duty. I asked him why. This was where the conversation became personal with me. I asked him what he reproached the French sailors with, and he said he thought they ought to have labored for the pas-
2508 sengers, and at that time there had already a boat left with the French crew in her to pick up the passengers that they might find. I asked him whether he wanted to get into a boat and go with me and do the same thing, and he said that wasn't his business; he was a passenger and not a sailor.

Q. While you were on the *Cromartyshire* were there any boats sent out to see if passengers could be saved? A. Yes, at least three times.

Q. By whom were those boats manned? A. By French sailors; I think there were a few sailors off from the *Cromartyshire* as well.

Q. Did the *Cromartyshire* send out any of her 2509
boats? A. I can't tell you exactly, but I think it was rather the French boats which left.

Q. After you got on the *Grecian* did you hear anything of an altercation between Mr. Cammeau and the fourth engineer, Mr. Laisne?

Objected to as incompetent, immaterial and irrelevant.

A. Yes; perfectly.

Q. What was it? A. As the conversation wasn't a personal one I didn't pay attention. It was only afterwards that I heard about it. I heard a few words that Mr. Cammeau said and I noticed that 2510
they were inexact and then I took part in it.

Q. What part did you take? A. I defended Mr. Laisne against the insinuations of Cammeau.

Q. State whether or not you as a passenger have any fault to find or any criticism to make upon the discipline that was observed by the officers of the ship after this disaster?

Objected to as immaterial, incompetent and irrelevant.

A. I have no fault and no criticism to make. I can only praise the conduct of the crew of the *Bourgogne?*

Q. How about the officers? A. They all did 2511
their duty, and the best proof of it is that they are all dead.

Q. You mean by that last statement that they died at their posts? A. Yes, doing their duty.

CROSS-EXAMINATION BY MR. BENEDICT:

Q. What class passenger were you? A. Second class.

Q Whereabouts was your room? A. No. 285.

2512 Q. On which side of the ship? A. On the right-hand side.

Q. Whereabouts from forward to aft? A. Aft.

Q. How far from the stern? A. It is aft; I can't tell you exactly. You have only to take the plan of the ship in order to ascertain, and you can see where No. 285 is.

Q. You say you think that it was about ten minutes after the collision before you got on deck? A. Yes, time to dress myself. I never looked to see how long it took me to dress myself.

Q. Which side of the deck did you come out? A. On the right hand side; right away after I went
2513 around on the left-hand side. When I saw there was no room for me on the left-hand side I went over to the right-hand side again.

Q. When you went over on the left-hand side whereabouts from fore to aft did you go? A. I went up on the bridge that separates the first and second classes on the spar deck. I went over on the left-hand side and went about as far as the middle of the ship.

Q. Do you remember what boat you went to, if any; the number of the boat? A. It was the third boat; there were six on a side. Do you think I amused myself in looking at the number of the
2514 boats at that time? The reason I know anything about the number of the boats at all is that I was saved in No. 9; and afterwards I found all the boats were disposed as to numbers on the ship.

Q. When you went over to No. 9 on the starboard side was that about opposite the boat where you had been on the port side? A. Yes, right opposite the entrance of the cabins; that is why I went there.

Q. What did you find when you went over to No. 9; whom did you find there, if anybody? A. Two sailors who arrived at the same time I did; who commenced getting the boats ready. I wish

to explain that the idea of the captain was to get 2515
the boats out on the other side, because at that time
that was the easiest place to get them out.

Mr. Benedict moves to strike out the answer, not having asked such a question.

Q. You said that after you got to No. 9 you got out your knife and tried to get No. 9 off; what did you do with your knife when you got it out? A. I commenced cutting the canvas which covered up the boats and helping the sailors who were there. I want to explain that this work of cutting these lashings and all that took some little time, as one of the passengers who were there and is dead now, 2516
loaned me his knife and I continued using that.

Q. Were there any other knives used except those two that you have spoken of? A. The sailors had theirs.

Q. Did they use them? A. Yes.

Q. Did they use them to cut the ropes? A. Yes; instead of unhooking things they cut the rope and it goes quicker. That was what was done.

Q. How long did it take to get No. 9 free so as to push it out? A. Perhaps twenty minutes. They worked on her twice. They started and then gave it up and then went at her again.

Q. You said that the Austrians called to you to 2517
help them at No. 11; was that before you left No. 9, as you say, and went back again, or was it while you were working at No. 9 the first time? A. It was the second time.

Q. How long a time do you think it was between the collision and the sinking of the vessel? A. About half an hour; thirty to forty minutes at the most.

Q. You said before that the Austrian sailors took boat No. 11 about fifteen minutes before she sank, as I understand it; is that correct? A. Yes, about.

2518 I wish to explain that at those times things go faster than they seem to, etc., etc., and so on. That is about as near as you can get it in approximate figures. Many things happen in such a time.

Q. How long after the Austrians got out and went away in No. 11 did you get out No. 9? A. Perhaps five minutes, perhaps three minutes.

Q. When did you arrive in New York after the collision? A. At the same time that everybody else did. I didn't keep that in my mind. I think it was a Friday. Wednesday in Halifax and Friday in New York.

Q. Had you ever been in New York before? A.
2519 Two years and a half.

Q. Do you mean two years and a half just before the collision that you had been living here in New York? A. Yes, and I was going back to France. Two years or two years and a half; I was going back to France.

Q. You were acquainted, were you not, while you were here, with the French paper *Courrier des Etats Unis?* A. Yes; I took from preference the English papers so as to learn English.

Q. After your arrival in New York after this collision did you go to the office of the *Courrier?* A. No, sir.

Q. Were you at any time interviewed by any-
2520 body connected with the *Courrier* to tell the story of the disaster? A. No, sir; I didn't. I met a man from the *World* office, but he didn't put my statement in the paper. That was on board of the Halifax steamer, taking us from Halifax to Boston; but I never said anything about the disaster because I didn't like that kind of a job. There were too many other people making statements.

Q. Did you not make a statement in Boston with reference to some newspaper or somebody connected with a newspaper with reference to the de-

tails of the collision? A. I only stayed there per- 2521
haps ten or fifteen minutes, just time to take the train.

Q. Did you or did you not? A. No. I know there is a story with regard to me, but it isn't exact. They said I was a good swimmer, but I didn't get wet, and that was the reason I was saved.

Q. You knew that there was a story then published in the *Courrier* about what you had said? A. It is three and a half years since it happened and I don't remember all, but I remember that it was stated that I was a good swimmer and that was why I escaped. There were so many things said that I don't remember everything that was said. 2522

Q. I understand that if I show you the statement published as made by you, you can tell whether you did make it? A. Yes.

Q. I show you the *Courrier des Etats Unis* of Saturday, the 9th of July, 1898; just read that column.

Witness does so.

Q. Have you read the statement which I show you? A. Yes, as to that which regards myself.

Q. After reading that do you still say that you made no statement to anybody connected with the *Courrier des Estats Unis* about the facts of the collision? A. I did to the *World*, but not to the *Courrier*. This is the substance of what I told to the *World* man, but the *World* didn't print what I told them. 2523

Q. But this is the substance of what you told to some reporter? A. Yes, the basis of this is about right. But it isn't—he has changed it some.

By Mr. Jones:

Q. Who has changed it? A. The one to whom I made the statement. It must have passed through

2524 three or four hands before getting to this newspaper. I don't remember that anybody came to see me on the part of the *Cromartyshire;* I only recollect the man from the *World.*

By Mr. Benedict:

Q. Didn't you see the *Courrier* after you arrived in New York; didn't you see that paper? A. Not this number.

Q. When did you arrive in New York? You say Friday. Were you not interested to know what the French paper told about the collision? A. I didn't care for that, because I didn't know exactly
2525 what it was.

Q. You didn't care because you didn't know? A. Yes; I didn't need to look at the paper; I knew what had happened.

Q. But you didn't know what they would say? A. Well, I didn't care for that. Why should that interest me what they said? I took the *Herald* and the *Journal* and other papers.

Q. But you say that this statement which I have shown to you is substantially what you said to the reporter? A. Yes.

Mr. Benedict offers in evidence the statement
2526 above referred to, and asks that the part of the first column which purports to be the statement of this witness be marked.

It is marked "Respondent's Exhibit 29" of this date. (Page 1212.)

The Witness: In arriving in New York I had things which were very much more necessary for me to do than to go and buy a newspaper. There were people here whom I had to see.

Q. Have you not already said that you did see the *Herald,* the *World* and the *Journal?* A. Yes,

I took the *Herald* and the *World* especially and the 2527
Journal. I wish Mr. Benedict would say whether after three years and a half he can recollect what was said in a newspaper.

Q. Never mind. When have you arrived in New York now? A. By the *Savoie* on her last voyage.

Q. Have you been in New York before that since the collision? A. Yes, once.

Q. When was that? A. About two years ago.

Q. Were you examined as a witness in England in the collision case between the owners of the *Bourgogne* and the owners of the *Cromartyshire?* A. No, never.

Q. Were you examined before anybody in Hali- 2528
fax? A. No, I wasn't questioned. I made a declaration before Mr. Franklin.

Q. Who was Mr. Franklin? A. He was the French consul in Halifax. I suppose that is his title. I am speaking now of what happened three years and a half ago.

Q. Did anybody else make a declaration before him with you? A. I think Mr. Laisne and the captain of the *Cromartyshire* and some other persons; we made our statement in regard to the accident.

Q. Did you ever give any other statement to anybody whatever except that one which you made in 2529
Halifax? A. I don't recollect whether I made one here at the Consulate or not. I know I talked with some people, but I don't recollect whether it was at the Consulate or at the office of the French Line here.

Q. Did you ever make any statement in reference to the matter in France? A. Yes, when I got back in France I made a statement with regard to the Austrians that got away with that boat.

Q. Were you asked questions about that? A. Yes.

2530 Q. Who asked the questions? A. The judge; Le Juge d'Instruction.

Q. Was there a proceeding in France before a judge? A. As I was a passenger I was asked——

Q. You don't answer my question. Was there any proceeding in France before a judge? A. I don't know whether anybody was being pursued there. I know I was questioned and others were questioned with regard to the Austrians taking this boat and getting away with it.

Q. Nothing except with reference to the Austrians? A. Yes; they had nothing else to ask me about.

2531 Q. Did you say that you were not interrogated by anybody about the matter except about the Austrian sailors? A. That is all.

Q. Do you know about any investigation before Commandant Aubert in Havre? A. No; I may have heard of it through the newspapers, but I don't know anything about it.

Q. You were not examined yourself? A. No.

Q. Did you make any statement in France that was published in any of the French newspapers? A. Yes, I made one to the newspaper called the *Evenement*.

Q. Or Paris? A. Yes, because it belongs to one of my friends who is connected with it. They came
2532 and asked me about it, but the newspaper didn't put in all that I said. Just a mention of it.

Q. How did you go back to France from New York at that time? A. By a steamer of the Transatlantic Line. I think it was the *Bretagne*.

Q. Did you pay your passage? A. I had paid my passage on the first ship and it was the least they could do to let me go over on the second. I went over gratis.

Q. Have you ever received anything from the company beside that passage? A. I asked the com-

pany whether they would reimburse what I had lost 2533
and they told me no, and I accepted that situation.

REDIRECT-EXAMINATION BY MR. JONES:

Q. You stated in answer to a question by Mr. Benedict that this report was substantially what you did say to the reporter. Are there any statements there that you can point out as erroneous? If so, do so.

Mr. Benedict objects and says if counsel will ask if they are statements that he didn't make he will withdraw his objection.

Q. Are there any statements there that you 2534
didn't make? A. Yes, there are things that I didn't say in there. Do you want to have them mentioned?

Q. Yes. A. It says that I didn't represent the concern that I do represent; it says I was going over there to represent it, and that isn't correct. I had already represented it for fifteen years. (Reading article) Here is a phrase which I don't understand. Some of it isn't good French, and it is hard to tell what it does mean.

Mr. Benedict (addressing interpreter): Will you tell the witness that he is asked to repeat the statements which are in there which he did not say, and 2535
that is all; nothing else?

Mr. Jones: I asked the witness a question and he is to answer it in his own way.

The Witness: It is stated here that the order was given to put the boats and rafts in the water, but on account of the thick fog which existed, and also because the mechanism serving to lower the boats did not work as well as it should, probably because it hadn't been used for a long time, there was a certain delay in getting the boats into the water. I

2536 didn't make that statement with regard to the mechanism of the boats being out of order.

Mr. Benedict: You must answer just the question and nothing else.

Mr. Jones: Answer it in your own way. Point out the things that you didn't say.

The Witness: I want to explain my reason why I didn't say that.

Mr. Benedict: The answer the question and nothing else.

Mr. Jones: I propose to have this witness answer this question in his own way; otherwise we will have to go before the Court.

2537 Mr. Benedict: Then we will go before the Court. You must let this witness answer the question all through.

Mr. Jones: I have asked the witness a question which he has understood. Now he can point out the things that are in that article that he did not say and he may do it in his own way.

Mr. Benedict: You were asked to point out the things which you say you didn't say; go on and do so.

Mr. Jones: I have asked this witness a question, and I insist upon his answering it in his own way.

Mr. Benedict: But I insist upon his confining
2538 himself to the question that is put to him.

The Witness: If I can't say what I want to say I won't say anything. I have made a statement that I didn't say certain things and I wish to say why I didn't say them.

Mr. Jones: You can state that.

Mr. Benedict: No, he can't state that until he has answered the present question.

Mr. Jones: Understand this: I have asked you a question which you have understood. Now, you can go on and answer it in your own way and don't be interrupted by Mr. Benedict.

Mr. Benedict: And don't answer anything except 2539
the questions that you are asked.

Mr. Jones: You answer anything you please Will you go on?

The Witness: Because at that time the ship had too much list to permit of getting those boats in the water. That was the only reason that prevented getting the boats into the water.

Mr. Benedict moves to strike out the answer as not being in answer to the question.

Mr. Jones: Now you are getting in order. Now, go on, Mr. Gaibot.

The Witness: It says here that we drifted from six o'clock until eight. We didn't drift; we were 2540
under control all the time. We were rowing. It is stated here that I saw a lot of people taking off their life belts after they got into the water. I didn't say that I saw people taking off their life belts in the water. It is stated here that I thought that a great many of the first-class passengers were wounded. I never made any such statement; and others probably killed at the time of the collision. I didn't make that statement. I haven't made these remarks regarding Mr. Dalidot. It may be all true. I was told that, but I didn't make the statements. I wasn't in the engine room, so I didn't say it. It says that he deserved all praise. 2541
I didn't say that, because I wasn't where he was; therefore I couldn't say it. I will stop where it commences to speak of Mme. and Mr. La Casse and I suppose there is nothing more about me here. I don't want it understood that all this article was written by me, and if it is I haven't sufficiently criticised it.

Mr. Benedict: Please mark with a point the part which the witness has read.

The witness signs his name where he stops reading.

852

2542 Mr. Jones: Go on and read the balance of the article and state where it is inaccurate, if in any place.

Objected to as immaterial, incompetent. Taken subject to objection.

Mr. Benedict also objects on the ground that the rest of the paper has not been offered in evidence.

The Witness: There is a statement of Mr. Achard in regard to the funnels of the ship having fallen on to the boat. There was only one funnel that fell. Mr. Achard's son was the one who loaned me
2543 the knife. I would like to state that the passengers threw themselves and hung on to the men and begged them to save them to such a point that the men couldn't move. The rest of it seems to be all right. I have stopped where it says it is an official report, and if you wish to know what did happen I am here to answer. I don't say that it exactly happened as it is stated in there. I say it is well enough.

Q. Well enough with the corrections that you have made? A. Yes.

Mr. Jones: I desire to have it noted on the record that Mr. Scol, the witness who was examined yes-
2544 terday, has been in attendance at this session and again called to the witness stand, and that Mr. Brownson, counsel for Mr. Cammeau, has also been present and that Mr. Cammeau has not been present.

Mr. Brownson states that he arrived after Mr. Scol's examination was concluded, and that Mr. Cammeau is not a party to this proceeding, nor has he any action pending against the petitioner in this proceeding.

Mr. Jones: Mr. Scol, being still present, is in readiness to take the witness stand if Mr. Brownson wishes to ask him any questions. 2545

Mr. Brownson simply repeats his previous statement.

Adjourned subject to further notice.

NEW YORK, November 26, 1901.

Met pursuant to agreement.

Present, counsel as before stated. 2546

ALBERT GAIDOT recalled:

By Mr. Jones:

Q. I understand you want to make some corrections in your testimony? A. Yes, sir.

Q. What are they? A. At page 467, in answer to the question "What occasioned your waking?" at the end of that answer I am given as having said: "The passengers and sailors who were willing to get a boat ready to put out." I meant that the sailors were intending to get the boat ready. At 2547 that time the sailors were trying to keep the passengers from getting in them, because they were hindering them from getting the boats out.

On page 468, the answer at the top of the page, where it says, "Then some sailors came"; I intended to say that the sailors came at the same time as the other people and not afterward.

In answer to the next question, "The sailors of what vessel?" at the end of the fourth line my answer is given: "So I went into the next boat No.

2548 9." This is incorrect. I was already at that boat and I stayed there.

In the tenth line of the same answer, the first part of the line, "These people were sunk and killed," the word "and" should be "or."

On the fifteenth line, commencing with the words "*Bourgogne* had so much list that the water was coming up on the spar deck," I meant to say there that the water was coming up about on a level with the spar deck.

On page 472, in answer to the second question from the bottom of the page: "What did they do in regard to that?" it says in the second line, "About
2549 a quarter or fifteen minutes," which should be "about a quarter of an hour or twenty minutes."

On page 479, next to the last question: "When you went over on the left-hand side whereabouts," etc., I am given as answering: "I went up on the bridge," etc. I meant that I went up on the spar deck. Nobody goes up on the bridge but the officers.

At the end of that answer I am reported as having said "Went about as far as the middle of the ship." This is not correct. Boat No. 9 where I went is further aft than the middle of the ship.

On page 480, with regard to boat No. 9, I didn't know at the time that it was boat No. 9; I learned
2550 that afterwards.

Page 484, in answer to the first question, "When did you arrive in New York," etc., I am given as saying "I didn't care for that, because I didn't know exactly what it was." That should be "I did know exactly what is was," which was the reason I didn't care to read it.

By Mr. Jones:

Q. When you went on the *Cromartyshire* did you see the captain's wife? A. Yes, sir.

Q. Did you have any conversation with her? A. 2551
Yes, sir; for a long time, for about the whole time I had been on the *Cromartyshire*, because I helped to give some food to the passengers and to the sailors, and she has been talking to me for about the whole time we were on the steamer, and when we left the *Cromartyshire* the captain and his wife asked me to stay on the *Cromartyshire* until we got to Halifax, and I didn't care to because it was in bad condition; that is the reason I went to the *Grecian*.

Q. Did the captain's wife say anything to you about the collision in the presence of the captain, and if so, what?

2552

Objected to as immaterial and incompetent.

A. Yes; when I first got on board the *Cromartyshire* I talked with the captain and afterwards I talked with his wife.

Q. Confine your answer to what the captain's wife said in the presence of the captain? A. When the people in the first boat had been saved and we got on board and we had been told to give them food and clothing, coffee and whiskey, etc., we then talked about the accident, how it happened, and the wife of the captain told me in the presence of her husband—the captain was attending to the matters of the ship and he might have gone back and 2553
forth there, but this conversation was in the cabin of the captain—she stated that she had got her two little girls up out of bed and dressed them up as they heard the siren of a ship; she feared there might be an accident, and she said also that they had their horn blown to show where they were, but that they didn't blow their horn as often as the siren on our ship was blown, because it was a horn that was made to work by the hand. We then talked of other matters, what happened after the collision,

2554 that they got their boats ready as soon as they could, put provisions in them, etc., because they didn't know then what damages they had sustained themselves.

No cross-examination.

JOSEPH PIRONNECK, being duly sworn and examined, through the interpreter, as a witness for the petitioners, testifies:

By Mr. Jones:

Q. Where do you live? A. Nowyal, Morbihan.

2555 Q. You were one of the crew of the *Bourgogne* when she foundered after a collision with the *Cromartyshire?* A. Yes, sir.

Q. What was your position? A. I was a coal heaver.

Q. Were you on watch at the time of the collision? A. Yes.

Q. When did your watch begin? A. At two o'clock.

Q. What were you engaged in doing during that watch? A. I was oiling the piston rods.

Q. Where were you stationed? A. At the elevated part of the engine.

Q. Was this in the engine room? A. Up at the

2556 top of the engine.

Q. Is there a platform between where you were stationed and the engine room where the engineer was? A. There was a grating underneath; below, way down, is the engine room.

Q. How much above the engine room was your place? A. It is up even with the deck.

Q. Could you see down into the engine room where you were? A. No.

Q. How much of the piston rods were exposed where you were? A. That is the length of the

piston that I was seeing between the cylinders (in- 2557
dicating about two feet, perhaps a little more).

Q. Did the heads of the piston rods project out through the upper cylinder? A. No.

Q. State whether you could tell anything about the speed of the engines where you were? A. No.

Q. Did you hear the siren or steam whistle of the *Bourgogne* during your watch? A. Yes, sir; the whole watch.

Q. State what you first knew of the collision? A. The shock of the collision.

Q. Did you hear any horn or other sound from the sailing vessel? A. No, sir.

Q. Did you see her? A. No, not then. 2558

Q. What did you do after the collision? A. I jumped overboard in order to catch hold of a raft. Right away after the collision I remained at my post; afterwards I jumped overboard.

Q. I understood you to say you got on the raft? A. Yes, after we were told to leave our posts.

Q. While you were on watch did you hear any noise in the steam pipes? A. Yes, sir.

Q. What kind of a noise was it? A. Steam.

Q. Can you give any more description of the noise than that? A. It was a sound of slowing down.

Q. When did you notice that? A. During the 2559
watch.

Q. State whether this noise continued up to the time of the collision? A. As long as the speed was reduced it made a noise; this noise continued.

Q. Do I understand you to say it continued up to the time of the collision? A. Yes.

CROSS-EXAMINATION BY MR. BENEDICT:

Q. Were you examined as a witness in Havre before Commandant Aubert? A. No; yes, I think I was examined before the Board at the Marine De-

2560 partment there. I don't know whether that was his name or not.

Q. You were examined there? A. Yes, sir.

Q. Did you sign any paper, any deposition? A. Yes.

Mr. Benedict calls upon counsel for the petitioners to produce a copy of that deposition in accordance with the notice heretofore given.

Counsel for the petitioner states that he has not the original of that deposition nor a copy of it.

Q. Did you not testify before Commandant
2561 Aubert that the speed of the engine had not been lessened during your watch from two to five o'clock? A. No.

Q. What did you say about speed when you were examined there? A. I said that I didn't know how many turns of the screw were being made before the collision. I did not say at the time of the collision. I said the night before.

Q. (Repeated.) A. I gave the speed that we were making the night before the collision, but I said I didn't know what speed we were making at the time of the collision.

Mr. Benedict insists upon it that what the
2562 witness said first was that he did not give the turns at the "moment of the collision" instead of "before the collision."

At the request of petitioner's counsel the question is repeated to the witness.

A. I said that the night (la veille) before the collision we were going at our ordinary speed.

Q. What do you mean by "la veille"? A. From two to six o'clock in the afternoon.

Q. Then you did say before Commandant Aubert

that the speed of the vessel had not been diminished during your watch from two to five, did you not? 2563

Petitioner's counsel objects to the question as not embodying the statement of the witness.

A. No, I didn't say that—that they had diminished, that they had slowed down.

Q. Do you say now that you said before Commandant Aubert that they had diminished the speed during your watch from two to five? A. Yes, sir; I say that I said before Mr. Aubert that the speed had been slowed down.

Q. During your watch from two to five? A. From two to six; that made four hours.

Q. Which watch did you mean when you said that; which of your watches did you mean when you said from two to six? A. The third watch. 2564

Q. There are two third watches; which one do you mean? A. It is the third watch from two to six.

Q. Which of those watches do you mean? A. The third watch is from two to six.

Q. Are there not two-third watches in the 24 hours? A. There are three watches in the 24 hours. I was in the third.

Q. Don't you go on watch twice during the 24 hours? A. Yes.

Q. Which of those two times did you refer to when you said that the speed was slowed down during your watch? A. The third. 2565

Q. Were you asked before Commandant Aubert with reference to the speed of the ship in any other watch than the third morning watch? A. No, I was interrogated as to the morning watch from 2 to 6, and with regard to no other watch.

Q. What did you mean then by saying a few minutes ago that when you were examined before Captain Aubert you testified as to the speed of the ship

2566 the evening before? A. Yes, I didn't know at what speed we were going at the time of the collision, and I answered that the night before we were going at our regular speed.

Q. Do you know now any better what the speed was during your watch just before the collision than you did when you were examined before Commander Aubert? A. No, I don't.

Q. Have you talked with anybody about this matter of the speed of the *Bourgogne* since you were examined before Commandant Aubert? A. No, sir.

Q. Have you not talked with the counsel here present? A. No.

2567 Q. Nor any one of the gentlemen present? A. No.

Q. When did you arrive in New York? A. Monday, yesterday.

Q. On what ship? A. The *Champagne*.

Q. Were you one of the crew of the *Champagne?* A. No, sir.

Q. How did you come to come here? A. I was called.

Q. By whom? A. Mr. Charlier.

Q. Who is he? A. At the agents in Havre.

Q. What did he say to you when he called you? A. He said he was going to have me sent to New York to testify with regard to the *Bourgogne*.

2568 Q. Did he tell you what you were going to testify about? A. No.

Q. Did he ask anything about what you knew about the matter? A. No.

Q. How old are you? A. Twenty-one.

Q. Were you in the employ of the company now? A. Yes, sir; at St. Lazerre.

Q. Do you remember now what you did testify before Commandant Aubert? A. Yes, I recollect what I said.

Q. Did Commandant Aubert, when you were ex-

amined before him, put questions to you? A. Yes, 2569
sir.

Q. Do you remember what the question was that he put to you in reference to the speed of the *Bourgogne?* A. He asked me what the speed of the *Bourgogne* was.

Q. What answer did you make him? A. I told him that we had been going at half speed during the watch before the collision, and that the night before we had been going at our ordinary speed.

Q. Do you say now that that is the fact; that she had been going at half speed during your watch? A. Yes, sir.

Q. What made you think that she was going at 2570
half speed? A. Because there was fog.

Q. Any other reason for thinking so except that there was fog? A. No, that is the only reason.

Q. From where you were standing at the piston rods can you see out on the deck? A. Yes, sir; you can, but I didn't leave my place there.

Q. Before you went to your place did you look to see whether there was fog? A. Yes, I did; and the whistle was going too.

Q. And you understood from that that the *Bourgogne* was going at half speed, did you? A. Yes; she was going at her rate of speed for a fog.

Q. Did you notice whether that same speed that 2571
you speak of continued up to the time of the collision? A. Yes, always.

Q. You didn't see, as I understand, after you went to your post, whether the fog continued or not? A. No, I didn't see.

Q. Then what you say now, as I understand you, is that the speed of the *Bourgogne*, so far as you know, had not been diminished after you came on watch; is that correct?

Counsel for the petitioner objects to the question as not stating the substance of the witness' testimony.

2572 A. You are speaking now of the watch during which the collision occurred?

Q. Yes. A. Yes, the speed had been slowed down.

Q. Do you say slowed down below half speed? A. No, to half speed.

Q. Have you not just testified that she was going at half speed when you went on watch? A. Yes.

Q. What is the business of a *soutier* or coal heaver on board the ship? A. To get the coal to the places where the firemen could use it.

Q. Had you done that business on the voyage over from Havre to New York? A. No, I was at the piston.

2573 Q. On the voyage from Havre to New York? A. Yes.

Q. Is that the business of a coal heaver? A. Yes, sir.

REDIRECT-EXAMINATION BY MR. JONES:

Q. State whether there were more than one set of coal heavers on the *Bourgogne*, and, if so, how were they named and what were their duties? A. No.

Q. Why were you engaged in oiling the piston rods when your position indicated that you were a coal heaver? A. It is a coal heaver that they put there to do that work.

2574 Q. Is he known by any particular name? A. No, *soutier* only. I am shipped as a coal heaver.

NEW YORK, December 4, 1901. 2575

Met pursuant to agreement.

Counsel being present as heretofore stated.

JEAN SALAIM, being duly sworn and examined as a witness for the petitioner, through an interpreter, testifies:

By Mr. Jones:

Q. You were one of the crew of the *Bourgogne* when she foundered after the collision with the *Cromartyshire?* A. Yes. 2576

Q. What position did you occupy on the steamer? A. I was fireman.

Q. Were you on duty at the time of the collision? A. No.

Q. Do you know anything about the collision? A. A little; yes.

Q. State what you know about the collision? A. At about twenty minutes of five in the morning I went up on deck. At that time I heard the telegraph to the engine-room being worked. I don't know what it was; I wasn't on the watch. At that time I looked over the side of the vessel to see the water, and the fog was so thick that I couldn't see it, and the siren was blowing at two minute intervals at the most. I went down below and about a minute after I had stretched myself out in my room I heard the shock. I then went up on deck again to see what had happened. I looked then and I saw the ship was settling in the water. I then went down below again and dressed myself and went out on the port side. I went up on the spar deck above and went to work at a boat, and when I saw that we didn't accomplish anything I saw that there were some life preservers in this boat and I got in and 2577

2578 took one for myself and gave the others to the passengers. I went around behind the after funnel and went over to boat No. 7. I got into boat No. 7 and when I saw that the funnel was going to fall down I jumped overboard, and when I came to the surface of the water again I didn't see anything. I then got up on the keel of a boat and I passed seven to eight hours there in that situation. After that one of the *Bourgogne's* boats came and took us off, and we were taken on board the sailing vessel, the one which had collided with us.

Q. What was the number of the boat to which you first went? A. I can't tell you.

2579 Q. On which side of the vessel was it? A. On the port side.

Q. What do you mean by saying that you couldn't accomplish anything at that boat? A. Instead of being able to push the boat out to get her out, she swung back in again; there was so much list.

Q. Did you hear the fog horn or any other sound from the *Cromartyshire,* the vessel which collided with the *Bourgogne?* A. No; I only heard the siren of the *Bourgogne.*

Q. You speak of having been finally rescued by a boat from the *Bourgogne.* Was that boat manned by the *Bourgogne's* sailors or by others? A. Yes; it

2580 was the men from the *Bourgogne* who had charge of her. She had been to the sailing vessel, and then they had come back after us.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Where do you live? A. At Treguier.

Q. How old are you? A. Thirty-three years.

Q. Are you in the employ of the company? A. Yes.

Q. How long have you been in that employ? A. I have been in their service since 1890; I have been sent here this time as a passenger.

Q. On the morning of the collision was your watch called before you went up on deck? A. No. 2581

Q. What waked you before you were called? A. I waked myself all alone.

Q. Which watch were you in? A. The first.

Q. When did you go off duty? A. At ten o'clock in the evening.

Q. Had you been asleep from that time until you were called? A. Yes.

Q. Did you know when the third watch was called that morning? A. No; I was asleep then.

Q. Then they had called the third watch before you got up? A. Yes; at two o'clock in the morning. 2582

Q. Can you give us the names of any other men who were in your watch? A. This was my first voyage on board *La Bourgogne*, and I have forgotten their names; I didn't know them.

Q. How long were you out on deck before the collision? A. I didn't have any watch, but I think it might have been four or five minutes.

Q. And then you went right down to your bunk again? A. Yes.

Q. And the collision took place about a minute after, as I understand it? A. Yes, about; at the most.

Q. Did you go up on deck as soon as you waked up? A. Yes; as soon as I waked up I went on deck. 2583

Q. Whereabouts on the deck did you go? A. About in the middle of the ship.

Q. Did you go out to the rail? A. Yes; and I looked overboard alongside.

Q. Then did you go right back and down? A. I stayed just a short time on the deck and I found it was quite cool and I went below right off.

Q. Which deck was that that you went on? A. The lower deck.

Q. Did you see anybody on the deck? A. No; no one.

2584 Q. When you came out on deck did you come out at the amidships of the ship? A. Yes; not quite, but nearly.

Q. How far did you have to go to get to the side of the ship? A. About 10 feet.

Q. You say you have come over this time as a passenger. Who ordered you to come over? A. The agency.

Q. Who? What is his name? A. Mr. Charlier.

Q. What did he say to you? A. Nothing. He told me to get my things together and get on board the *Gascogne* and come here. He told me nothing else.

2585 Q. Didn't he tell you what you were to come here for? A. Yes; he told me why, but he didn't tell me anything after he said it was for the matter of the *Bourgogne*.

Q. Didn't he ask you what you knew about the matter? A. No; he asked me nothing.

Q. And you told him nothing? A. Nothing.

Q. What were you employed about before you were passenger? A. I arrived in Havre from another voyage and he took me off from that ship and put me on the *Gascogne*.

Q. What voyage was that? A. A two months' voyage to Colon and back.

2586 Q. Were you examined as a witness before Commandant Aubert in Havre just after the collision? A. Yes; he questioned me.

Q. Did you sign any deposition? A. Yes.

Q. What questions did he ask you? A. He asked me whether I saw the commandant on the spar deck, and I told him no.

Q. Did he ask you anything else? A. He asked me how I was saved.

Q. Did he ask you anything else? A. No.

Q. Then you didn't tell him what you have testi-

fied to here to-day about the facts of the collision? 2587
A. No; he only asked me that—how I was saved.

Q. Have you ever told anybody what you have testified to to-day before you were a witness. A. No; to no one.

NEW YORK, December 11, 1901.

Met pursuant to adjournment.

Present—Mr. JONES, MESSRS. BENEDICT and Mr. STETSON, THE INTERPRETER.

JOSEPH ANDREN, being duly sworn and examined, 2588
through the interpreter, as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you reside? A. I live in Havre.

Q. In whose service are you engaged? A. Of the company; I am on board the *St. Laurent*, of the Transatlantique Company.

Q. Were you one of the crew of the *Bourgogne* when she was lost after collision with the *Cromartyshire?* A. Yes.

Q. What position did you have? A. I was one of the first firemen and had charge of the store- 2589
room; store-room keeper.

Q. What do you mean by the store-room? A. It was the store-room for everything that concerned the engines; spare pieces and tools and everything that concerned the engines.

Q. Did you have any duties other than those of taking charge of the store-room? A. Yes, I was charged with the distribution and keeping account of everything that was delivered to the engine; that is to say oil and supplies.

Q. Did you have anything to do with the fire

2590 room at all, outside of the store-room? A. I had to go all over; both in the fire room and in the engine room.

Q. Did yu have anything to do as stoker in the engine room? A. No, I was certainly in the engine room, because I was first fireman; my position was store-keeper and I had to do with the distribution, as I have stated, of the supplies; I didn't fire.

Q. Were you on duty at the time of the collision? A. No, sir; I was in bed; I only went on watch at six o'clock in the morning.

Q. Were you asleep at the time of the collision? A. Yes.

2591 Q. Do you know a man by the name of Calvary, who was one of the crew of the *Bourgogne?* A. Yes.

Q. What position did he ordinarily occupy on the *Bourgogne?* A. He was fireman and looked after the connecting rods (*tateur de biel*).

Q. Do you recollect whether or not on the last voyage of the *Bourgogne*, when she was lost, I mean by that her attempted voyage from New York to Havre, any other than the ordinary duties were assigned to Calvary? A. No; that is to say, Calvary was a fireman and belonged to the first watch; Bozec fell sick and was replaced by Calvary in the third watch.

2592 Q. Do you know who delivered the order to Calvary to take Bozec's place? A. I gave him the order, which was given to me by the chief engineer.

Q. What was that order? A. It was to change his watch; to eat, so as to take his watch at two o'clock in the afternoon; from two till six, and two to six in the morning; it is the same thing. Those are the hours of the third watch; from two to six morning and afternoon.

Q. So that Calvary was on duty between two and six of the morning of the collision? A. Yes.

Q. Do you know what work he was doing during 2593
that watch?

Mr. Edward Benedict objects on the ground that the witness said he was asleep.

A. It was his business to touch the parts of the engine to see whether they were heating, and to oil.

Q. Do you know what Bozec's duty was, had he not been sick? A. If Bozec had not been sick he would have been a fireman.

Q. And doing what? A. He would have been in the fire room firing. If Calvary hadn't replaced him he would have been in the engine room or in the fire room; they take a fireman to replace a fire- 2594
man in case of necessity.

Q. What attracted your attention to the collision? A. I didn't see anything of it; I was asleep.

Q. Were you waked up by the blow? A. Yes.

Q. What did you do then? Just go on and state what you did and what you saw? A. If you have the report that I made you have only to read it and that will show.

Q. I want you to state in your own way, from your recollection, just what you did and what you saw after the collision. A. I went down to the telegraph in the engine room, and the engine was stopped; after that the order was given by the telegraph to go ahead slow; I was at the telegraph 2595
and the chief engineer was at the starting bar; Mr. Laisné then came and the chief engineer gave him some orders which I didn't hear, and Mr. Laisné then went towards the fire room.

Q. By Mr. Laisné you mean the fourth engineer? A. Yes. Mr. Laisné, who is here. I remained at the telegraph, and afterwards the chief engineer told me to go and start the bilge pumps and close all the water tight doors, fire room, engine room, and everything.

2596 Q. Was that order obeyed? A. Yes, sir; Mr. Laisné also got orders to set the bilge pump at work, and he helped me. There was an oiler also there who had his arm broken by doing so. He was lost.

Q. Go on and state. A. After the pumps were all going I went into the engine room; Mr. Dalidot asked me to go and get a plank to put under his feet to prevent him from slipping, because the engine room was full of water on the starboard side at that time and it was after that that the engine was stopped and the engine room was invaded by water, and everybody tried to save himself.

Q. Then what did you do? A. I climbed up on
2597 the cylinders of the engine and got out of the skylight and I found boat No. 7 with people in her, 57 or something like that, 50 or 60 people in her, I had just time to get in when the funnel fell down on the boat. I swam away from the vessel as fast as I could, and afterwards got up on the keel of a capsized boat; I stayed there about seven hours, on the bottom of this boat, until three or four o'clock in the afternoon, and a boat's crew from our ship came and picked me off, and I was taken on board the *Cromartyshire*. I stayed on board of her about half an hour, and then the *Grecian* came and I went on board the *Grecian* and she took us all off.

2598 Q. Took you to Halifax? A. Yes.

Q. Did you have any fog on the way to Halifax? A. Yes; some; not much; some.

Q. About how long was the hawser with which the *Grecian* towed the *Cromartyshire?* A. About 70 meters—I think I have stated too little; I think it was probably 100 meters. I mean the length of the hawser between the two ships; it might have been more than that; I can't say exactly.

Q. Did you hear the fog whistle of the *Grecian* blown during that fog?

Objected to as immaterial.

A. Yes. 2599

Q. Do you know when that fog came on, can you recollect now? A. I can't say exactly; I think about ten or eleven o'clock in the evening.

Q. Do you remember how long it lasted, about? A. Not very long; perhaps half an hour.

Q. Did you, during that fog, hear any fog horn from the *Cromartyshire*?

Objected to as immaterial.

A. No.

Q. Do you remember whether there was any fog on the following morning, on your way to Halifax? A. No; it was clear weather the following morning. 2600

Q. You were examined as a witness before Commander Aubert in Havre, after you returned to France, were you not? A. Yes.

Q. And you made a report or statement to him of the facts of the collision? A. Yes; of everything that I saw.

Q. Have you been examined in any other proceeding or case? A. No; I was called to be photographed.

Q. By whom? A. I was called to the tribunal in Havre, before a judge, who called me to be photographed; I was photographed.

Q. Did you make any statement before the Commissioner of Wrecks at Halifax? A. No, sir. 2601

Q. Were you examined as a witness in England, in the English court on the trial of the case of the owners of the *Cromartyshire* against the Compagnie Transatlantique? A. No; this is the first time that I have ever been interrogated.

Q. Where did you go after returning to Havre and making your statement or report to Commander Aubert? A. I was first fireman on *La Navarre*.

Q. When did you last arrive here? A. I have just arrived by *L'Aquitaine*, Sunday.

2602 Q. And you expect to return to France to-morrow on the same steamer? A. Yes.

Q. Did you observe, when you went into the engine room after the collision, the gauge indicating the pressure of steam in the boilers? A. Yes; 8 kilos.

Q. Did you notice whether after the engines were stopped, just after the collision, there was any blowing off of steam from the steam valves? A. We only had 8 kilos; for our ordinary steaming we require 11½ kilos; I doubt whether the safety valve would have blown off at 8 kilos.

Q. Do you remember whether it did blow off or
2603 not? A. It was not blowing off.

Q. What officer of the vessel was in charge of the boat No. 7, which I understand you to say was swamped by the falling of the funnel? A. Do you mean on the crew list?

Q. Yes. A. I can't tell you.

Q. Who was actually in charge? Who did you see in charge? A. Mr. Pichard, the first lieutenant.

Q. What was the number of the boat which you finally reached? A. I don't know; she was so sunk in the water that her number didn't show.

Q. Who were in boat No. 7 besides Mr. Pichard and the men of the crew that were manning it? A. Passengers, male and female, for the greater part.

2604 Q. Have you any idea how many were in the boat? A. I told you already, from 50 to 60.

Q. Do you know whether any of those passengers were killed or injured by the falling of the funnel? A. They were all lost, I think, with the exception of one or two who jumped overboard. They were most all lost, very few saved.

CROSS-EXAMINED BY MR. BENEDICT:

Q. You said you were attached to the *St. Laurent;* where does she run? A. The line to Colon.

Q. Have you been on her ever since the collision 2605
of the *Bourgogne?* A. I was on board the *Navarre,* as I have stated to you.

Q. How long were you on board of the *Navarre?* A. About six months.

Q. And since that on the *St. Laurent?* A. No; I was on board the *Normandie.*

Q. Immediately after the *Navarre?* A. Yes.

Q. How long were you on board the *Normandie?* A. About a year and a half.

Q. And after the *Normandie* what then? A. The *St. Laurent.*

Q. Where were the *Navarre* and the *Normandie* running? A. To New York. 2606

Q. So that you were runn'ng between Havre and New York from the time of the collision until you went on board the *St. Laurent?* A. Yes; during about a year and a half.

Q. Did you go to England to be examined as a witness in the collision case there? A. No.

Q. Did you hear when that trial took place? A. Yes; you mean when the men were called to go to England?

Q. I mean whether you heard about that time when the trial took place; heard that there was a trial. A. Yes.

Q. What ship were you on then? A. I think I 2607
was on board either the *Navarre* or the *Normandie;* I can't say exactly.

Q. Which watch were you attached to on board the *Bourgogne?* A. There was only two store-keepers; the chief and his assistant; I stood watch from six o'clock until midnight, and from six in the morning until noon.

Q. How long had you been on the *Bourgogne* before this voyage? A. Since 1893.

Q. Had the *Bourgogne* been running during the year before this collision? A. No; she was at St. Nazaire, changing her boilers.

2608 Q. Were you on board of her during that time when she was being repaired? A. No, while they were changing the boilers I was on board the *Normandie*.

Q How many voyages had you made on the *Bourgogne* after the change of boilers, before the voyage when the collision was? A. It was the fourth voyage that we were making; we left Havre on the first voyage the 19th of March.

Q. When did you leave the second voyage? A. I can't say exactly.

Q. Do you remember when you left Havre on the third voyage? A. No.

2609 Q. Do you remember when you left Havre on the fourth voyage? A. No; I might be mistaken in the date; I can't say exactly.

Q. Then the night of the collision you had turned in at midnight, as I understand it? A. Yes.

Q. Was the siren blowing then? A. There was no fog; it was not blowing.

Q. Did you hear the siren blowing before twelve o'clock? A. No; after, I did.

Q. When did you hear it after midnight? A. I can't say; when you are asleep you can't give the hour exactly always.

Q. Can you hear the whistle when you are asleep? A. Yes; when you are in bed you are not asleep
2610 all the time; if it blows you generally hear it.

Q. Did you hear it most of the time after you turned in at twelve o'clock? A. Yes; every minute pretty nearly.

Q. How soon after twelve o'clock do you remember that you heard it first? A. About one o'clock I think; when the fog begun.

Q. How do you know when the fog began? A. When you hear the siren you know there is fog; that is sure.

Q. Can you tell us no nearer than that as to how

soon after twelve o'clock you heard the siren? A. 2611
I left the watch at twelve o'clock, and before I rendered an account of what I had been doing and got through fixing up it was half-past twelve, and it was then, in turning in, that I heard the siren.

Q. And from that time up till the collision, whenever you were awake, you heard the siren blow? A. Yes.

Q. How often do you think you woke up during that time? A. Every half hour, or even less; it depends.

Q. Did you know Calvary before he joined the *Bourgogne?* A. Yes; it is now ten years that I have known him.

2612

Q. When did he join the *Bourgogne?* A. After she fitted out in St. Nazaire, in the month of March, as I have said.

Q. Was he on board all the four voyages that you have spoken of? A. Yes.

Q. He had been, during all that time, fireman? A. Yes.

Q. Had he been in the same watch on all four voyages? A. Yes, he was in the first watch during all those voyages.

Q. What were the hours of the first watch? A. From six to ten, morning and evening.

Q. And the second watch? A. From ten to two, 2613
morning and night.

Q. And the third watch was when? A. From two to six; it doesn't change. Night and day.

Q. Your hours, as I understand it, were from six to twelve? A. Yes, from six to midnight, and six o'clock to noon.

Q. During the night before, after six o'clock, did you see Calvary on watch? A. No; he went on watch at two o'clock in the morning.

Q. But you were asleep at two o'clock in the morning? A. I am the one that gave him the order.

2614 Q. But you don't know whether it was done or not, of course, for you were asleep? A. Yes, I did; when I went down at the time, after the collision, he was down there in the engine room.

Mr. Benedict moves to strike out the answer.

Q. You were asleep at two o'clock, and you do not know, therefore, whether Calvary went on watch at two o'clock? A. I know he was there at five o'clock.

Q. I will put the question again. That is not what I asked. (Question repeated.) A. No, I can't say that he did; but at five o'clock he was there.

2615 Q. When did you give Calvary the order that you speak of? A. At eight o'clock in the morning.

Q. Of what day? A. Monday morning—Sunday morning. We were run into Monday morning; it was Sunday morning about eight o'clock.

Q. When did he change the watch? A. At two o'clock in the afternoon.

Q. So that he was on watch then at two o'clock in the afternoon, before the collision, and from that time until six o'clock; is that correct? A. Yes.

Q. Were you on watch at that time? A. Yes; I am on watch day and night.

Q. Did you see Calvary on duty during that
2616 afternoon watch? A. Yes.

Q. What was he doing? A. He was attending to the connecting rods, oiling.

Q. Then if Calvary swears that he wasn't in the engine room until the morning watch, the morning of the collision, he tells us what isn't true; is that correct? A. Yes—what isn't?

Q. (Question repeated.) A. Yes; he went on watch from two o'clock in the afternoon to six o'clock in the evening, and then he went on watch at two o'clock in the morning again.

Q. Do you know better when Calvary went on watch than Calvary knows himself? A. I gave him that order. 2617

Q. I will put my question again. (Question repeated.) A. No, I do not.

Q. Then if Calvary swears that he didn't take the watch in the afternoon at two o'clock do you mean to swear that he did? A. No, I am mistaken there; I received the order with regard to Calvary in the afternoon; I am mistaken; the order of the chief engineer came to me at about four o'clock in the afternoon, that Calvary should eat his dinner, but that he shouldn't take his watch then. Now I recollect; then, instead of going on watch from six until ten he took the watch at two o'clock in the morning. 2618

Q. Then when you said that you gave Calvary the order at eight or nine o'clock on Sunday morning you didn't state the fact, did you?

Counsel for petitioner objects to the question as not stating the substance of the witness's testimony, the witness having stated that he was in error.

A. I stated what I thought was the fact, but I recollect now that I was wrong.

Q. Then when you said that you saw Calvary on watch in the afternoon before the collision, you were also not stating the fact, were you? 2619

Same objection as before.

A. I don't think I said that he was on watch in the afternoon.

Q. Did you not say that you saw Calvary on watch in the afternoon, and that he was then attending to the connecting rods? A. I didn't understand that I did.

Q. Did you know Bozec before he was on the *Bourgogne*? A. Yes.

2620 Q. When did he join the *Bourgogne?* A. Before 1893.

Q. Had he been on board all these four voyages before the collision? A. Yes.

Q. Do you remember whether he stood his watch on the last voyage from Havre? A. Yes; he fell sick here in New York.

Q. Didn't he do any duty after the *Bourgogne* left New York? A. Yes, he worked up to the time that the other one took his place.

Q. Did you see Bozec at work any time during Sunday, the day before the collision? A. That was the day, Sunday morning, he went into the sick
2621 bay; that is where I made my error, because I remember now that he was ordered into the sick bay at that time in the morning.

Q. At what time in the morning? A. That was the time when he hunted up the doctor that told him to go and turn in; that was at eight o'clock.

Q. He then didn't work at all during the morning watch? A. No.

Q. Did he do anything in the afternoon watch? A. No; he was in bed in the hospital.

Q. Who took his place in the afternoon watch? A. It was another fireman, but I don't know which, and it was then that Calvary was designated.

Q. Did you give the order to the other fireman?
2622 A. No.

Q. Who gave the order to the other fireman to replace Bozec? A. The chief of the watch; I don't know who he was.

Q. Who was the chief of the watch? A. Mr. Gautier.

Q You say that you made a report in reference to the collision. When did you make that report? A. Before Commander Aubert.

Q. Did you write it out yourself, or did you

answer questions? A. I answered questions, and 2623
I also wrote.

Q. Have you seen the report since then, or a copy of it? A. No.

Q. I understand you to say that after the collision and after Mr. Laisné had, by order from the chief engineer, left the engine room, that then the chief engineer gave you the order to go and shut the doors; is that correct? A. Yes, that is correct; some of the doors were already closed, but there were some that had not been closed.

Q. What doors did he give you orders to close? A. To close the doors of the fire room, three of them, and then those of the engine room. 2624

Q. What doors are they? A. They closed up the tunnel, the separation between the fire room and the engine room.

Q. Where did you have to go to close those doors? A. It is right alongside there, it is a little grating that is perhaps—it is in the engine room, about 15 meters up; I had to go up a ladder about 15 feet; 5 meters; to close these doors.

Q. Had to go up to close the doors in the tunnels that go down below? A. Yes; that is it.

Q. How many doors did you close? A. Three.

Q. Anybody with you? A. No; I was alone.

Q. Did you have to go up the ladder three times 2625
then to close the three doors? A. No.

Q. How did you go from one door to the other? A. The same brake there works the three doors.

Q You have stated that you got orders to start the bilge pumps. When did you get that order? A. Right away after the collision.

Q. Before you got the orders to shut the doors then? A. Before; it was before and at the same time; the order was to set all the pumps going and to close those doors.

2626 Q. What did you do to start the bilge pumps? A. Let the steam in; that is all.

Q Did you do it? A. Mr. Laisné helped me and the oiler and myself; three of us.

Q. Who was the oiler; what was his name? A. Douaud.

Q. Was there any other oiler in the engine room except Douaud? A. Yes.

Q. Who? A. Magdeleine. He was the oiler of that watch; and Haglon, who was an apprentice of that watch.

Q. When you went into the engine room did you see where Douaud was and where Magdeleine was?
2627 A. Yes.

Q. Where was Douaud? A. He was at the connecting rods.

Q. On the floor of the engine room? A. No, at the upper part; up above.

Q. Where was Magdeleine? A. He was there also.

Q. So that there was no oiler below on the floor of the engine room? A. Yes; Calvary, he was the only oiler. Mr. Gautier, the chief of the watch, was there.

Q. Do you mean to say that the man who is on the floor of the engine room is the man who looks at
2628 the connecting rods? A. Yes.

Q. And does he do no oiling, doesn't he oil the engine? A. Yes.

Q. Was there any one on the floor of the engine room besides the chief engineer, when you got in there? A. Yes, Mr. Gautier was there, and the man who feels the connecting rods, Calvary.

Q. How do you say you got out of the engine room? A. I got up on the cylinders.

Q. Did anybody else get up that way? A. No; I was alone with Mr. Gautier and the chief engineer; but they went up by the ladder.

Q. Did you see how they got up out of the engine 2629
room? A. Yes.

Q. Did you see how anybody else got out of the engine room except Gautier and Dalidot? A. Mr. Laisné went up five minutes before I did, to give orders.

Q. The same way that you got up? A. I don't know how he went up.

Q. Do you know how anybody else got up except yourself and Dalidot and Gautier? A. No, I do not; I didn't notice anybody; I was busy with my bilge pumps and other matters.

Q. Did Gautier and Dalidot get out before you did, or did you leave them there? A. Mr. Dalidot 2630
had his whistle, and he blew for them to evacuate the engine room; I went up and left them, and they were coming up, each one looking after himself.

Q. After you went up was there any one in the engine room except Dalidot and Gautier? A. Magdeleine, Haglon and Douaud were there only.

Q. Do you know what is the full pressure on the boilers? A. 11 kilos 750, I think.

Q. You have said, as I understand it, that for ordinary steaming you have 11 kilos and a half; is that correct? A. Yes; 11 kilos 750 is the ordinary pressure.

Q. What is the maximum then? A. 11 kilos us- 2631
ually.

Q. What is the maximum? A. That is it; on the safety valve; at that point the safety valve blows off.

Q. How did it happen that you looked at the pressure? A. I can't help it; it is right before my eyes.

Q. Mr. Laisné has testified that no good engineer would run with less than 10 kilos. Do you agree with him in that? A. I don't know how I am going to explain to you. If the engine was stopped there might only be 5 kilos pressure.

2632 Q. (Repeated.) A. Do you mean the full speed?

Q. I will put the question again, and answer it just as it is. That is what Mr. Laisné has said. (Question repeated.) A. At half speed you don't require 10 kilos to run at half speed.

Q. (Read to witness.) You must answer the question. A. Yes, I think I agree with him; but at the collision there wasn't 10 kilos pressure.

Q. Then you think that the man who had charge of the engine at that time was running with less pressure than a good engineer would run her with, do you? A. I can't answer that question. You embarrass me.

2633 Q. Was anybody present when you gave Calvary the order to change the watch? A. Yes; but I don't think the one who was there survived the disaster.

Q. Who was he? A. He is dead; he was a fireman; I can't recollect his name, but I think he was lost.

REDIRECT-EXAMINATION BY MR. JONES:

Q. Do you know where Douaud is? A. He is dead; he was the one who had the arm broken getting the bilge pumps under way.

Q. Was he lost in the collision? A. Yes; he remained in the engine room.

2634 Q. Where is Magdeleine? A. He also remained there.

Q. Was he lost? A. Yes; I don't know whether he was able to get out on deck; but I know he wasn't saved.

Q. How about Haglon? A. He remained there.

Q. Was he saved? A. He was not saved.

Q. And Mr. Gautier? A. Mr. Gautier was also lost.

Q. And Mr. Dalidot, the chief engineer, was lost? A. Yes.

Q. Were any of the officers of the ship saved? A. 2635
No; the only deck officer saved was the boatswain.

Q. Then do I understand you to mean the captain, the second captain, the four lieutenants, and all the officers of the deck? A. Yes, excepting the boatswain.

Q. Do you know the name of the boatswain who was saved? A. Petiot.

Q. Do you know where he is now? A. I don't know what ship he is on, but he is in Havre.

Q. Do you know if he is in the service of the company? A. No, he is not in the service of the company.

Q. Do you know how long he has been out of the 2636
service of the company? A. Probably a year and a half or two years; I can't say exactly.

EDOUARD LAISNE recalled for further examination:

Mr. Benedict: I object to the further examination of this witness, on the ground that his examination has been closed twice.

By Mr. Jones:

Q. You have already been examined in this case? A. Twice.

Q. How is the engine room clock regulated with 2637
reference to the bridge clock, if you know? A. At twenty minutes of midnight the hands of the engine room clock would be put to midnight; this on the voyage from New York to Havre, and on the voyage from New York to Havre the hands were set back a quarter of an hour; the two clocks, that of the engine room and of the bridge, were set right at noon that day.

Q. Do you know what changes were made in the bridge clock? If so, state them? A. I don't know

2638 how much the bridge clock was set ahead; I don't think it was touched. If there is found any difference in time between the bridge and the engine room it is due to this question of difference between those two clocks; but I can't say whether the clock is set ahead or not.

Q. What do you mean by the difference in the two clocks, the time of changing them, or anything else? A. Regularly, habitually in the engine room the hands of the clock were set ahead twenty minutes at midnight; I think that the bridge clock was changed at noon and not at midnight, or perhaps in the morning when they took their observation.

2639 Q. It has been stated in this case by a former steward or assistant steward in the service of the company, and by another witness in this case, that the *Bourgogne* and the other vessels of the Compagnie Transatlantique were in the constant habit of running at full speed in a dense fog in mid-ocean. I wish you would state whether or not that is the fact with reference to the *Bourgogne* as you have knowledge of that fact, in your capacity of her fourth engineer, and in answering the question you can state whether such is the fact with reference to any other steamship of the company with which you have been connected?

2640 Objected to as having been inquired about before.

A. I was an apprentice on the ship before I occupied my last position on her, and many times I have slowed down under Captain le Bœuf, and also at the time that Mr. Dalidot was chief engineer; I have slowed on the *Normandie*, as engineer, chief of the watch, and I have many times seen the ship slowed down in time of fog, and on board of the *Normandie* I have seen the ship stopped and a drill gone through, with the water tight doors, and the

captain in that case came down immediately him- 2641
self below to see whether his orders had been executed.

Q. It has also been testified by the same witnesses, if I remember them correctly, that this alleged habit or custom of not reducing speed in a fog at sea was because the captains desired to arrive in their respective ports of destination at regular times. I wish you would please state that the fact was and still is, as far as you know it, as to whether the steamers of the line arrive in their ports of destination at irregular times, and if so, why?

Objected to as not the best evidence; the 2642
exact times of arrival being in the possession of the company, and can be proved by direct testimony; also objected to on the ground that the question does not state accurately what the testimony has been; and also that the captain arriving in this harbor every week, the fourth engineer of one ship is not the proper party to prove such matters.

A. The steamers arrive at a regular hour in Havre. We have to go at full speed all the time, and the least bad weather or the least diminution of steam pressure during five or six hours or during the day, for example, would affect the hour of our 2643
arrival, so that we might miss the tide; and the captain who wouldn't slow down during a fog, who would not have slowed down in a fog, and who thereby might have gained two hours' steaming, and who the next day would get four hours' bad weather, would be pretty certain to miss his hour of arrival. I don't see what benefit there would be in that, and the greater part of the time the ships of the line there, missing the tide, and arriving six or eight hours at least before they are able to get into the

2644 basin,—and I ought to say to you that at the time of the *Bourgogne*, during her existence, we officers the longer we remained at sea the more money we get, and our advantage was not to go at full speed.

Q. What was the regular time of arrival in good weather of *La Bourgogne* in New York, sailing from Havre on Saturday? A. That depends on the hour on which we leave Havre. There is no regular hour. You can't draw up a schedule like a railroad train.

Q. The *Bourgogne* usually arrived in New York Saturday night, or Sunday morning, in good weather, didn't she? A. Yes; generally if the
2645 weather was very clear and fine.

Q. What would be her probable time of arrival if she had a good deal of fog on the voyage, and heavy weather?

Objected to on the ground that the actual time can be proved from the records of the company.

A. Probably some time during Sunday. The fog generally lightens up from time to time.

Q. Did you, during the time that you were on the *Bourgogne*, ever know her to arrive as late as Monday morning? At either port? A. Yes; before her boilers were changed; but not since.

2646 Q. What was her usual time of reaching New York before her boilers were changed? A. I can't say; those ships, going at their maximum speed, arrived during the night of Saturday; before midnight; if they had the least delay they arrived in the morning of Sunday; forenoon; Sunday forenoon, after delay from slowing down, or from bad weather.

Q. It has been attempted to show on the part of the claimants here, that notwithstanding the prevalence of fog at sea the *Bourgogne* and other

ships of the company went ahead at full speed. 2647
Now will you please explain, or state any facts within your knowledge, to show whether or not that pretence is correct or not, and you can answer the question in your own way.

Objected to as immaterial and incompetent, and not intelligible.

A. In summer voyages, when the ships have arrived at New York after midnight it is sure that they have slowed down. They must have had delay, whether it is bad weather or slowing down, one or the other. On board the *Bretagne*, which is the same type of vessel as the *Bourgogne*, we arrive 2648
about half-past four Saturday afternoon.

Q. State whether, as matter of fact, it is true or not that the *Bourgogne* and other vessels of the company with which you have been connected, have run at full speed in dense fog at sea?

Objected to as a question for the court.

A. No, it is not true; I have slowed down myself during my watch.

Q. Often? A. I don't recollect how many times; but I am very sorry that I have left my memorandum book of my watch on board the *Bourgogne*, all that was noted.

Q. This memorandum book was lost? A. Yes. 2649

Q. Some of the stokers have testified that shortly before the collision they heard a rattling in the steam pipes which they have described in their own way. I wish you as an engineer would state what that indicates? A. You ask what is indicated by change of noise in the steam pipes?

Q. Yes. A. When the engine is going regularly at full speed the throttle valve is wide open; the passage of the steam being in no way obstructed you only hear the cadence of the engine; the steam

2650 passes through the pipes without noise, or at least with a regular noise. If the speed is reduced the steam valve has to be closed, and, the steam being strangled in that way, a whistling noise is produced. This whistling indicates that the engine is going slowly, and no error about that.

Q. Do you know a man by the name of Charles Liébré? A. Yes.

Q. Where did you make his acquaintance? A. I saw him for the first time on board of the *Grecian*.

Q. Do you know who he is? A. No; he was a passenger.

Q. Mr. Liébré testifies that he had some altercation or discussion with you on the *Grecian*, after
2651 you were all saved; will you state exactly what occurred with Mr. Liébré?

Objected to as having been already gone over.

A. I have already stated in my former interrogatories; I have nothing to change in that; Mr. Liébré insulted me and I replied to him. I had made no menacing gestures to him. Everything was comprised in an exchange of words, and I think that I was a great deal more polite than he.

Q. Was there anything said in that conversation with Liébré, or in any other conversation with him, by you or by him, in regard to the speed of the
2652 *Bourgogne* before the collision? A. No, never; it is false; absolutely false; archi-false.

Q. Do you know whether Mr. Liébré made any complaint against you or any other officer or any member of the crew of the *Bourgogne*, before the Juge d'Instruction at Havre?

Objected to as immaterial.

A. No, not against me, but against the whole crew in general.

Q. Do I understand you to say that such a charge was made? A. Mr. Liébré wrote, or caused to be

written to a newspaper, a newspaper which I have 2653
yet, that I had fired a revolver at a woman. I saw that in a Parisian newspaper. I went and made a complaint against Mr. Liébré at once at the Tribunal in Havre. The Juge d'Instruction at Havre, to whom I addressed myself, says "You have arrived at a good time; Mr. Liébré is here, and we are going to call all the survivors of the *Bourgogne* in order that they promenade before him, Liébré, in his presence." I asked also to pass before him, as the first one. And after an explanation given before the Juge d'Instruction in Havre, Mr. Liébré said and signed a declaration, according to which everything that he imputed to me was only hearsay on 2654
his part; a person who was with him, Mr. Achard, signed a declaration by which he had absolutely nothing to reproach me with, and those documents exist. Then there were caused to pass before Mr. Liébré all the men that he had accused, and he recognized none of them. I only regret one thing, and that is I didn't pursue him for defamation. Mr. Liébré made mention of the fact of the revolver, and I explained already in my former interrogatories how I came to use the word claimed, and this is what he has distorted; those are the words which he has distorted.

Mr. Benedict moves to strike out this answer 2655
as immaterial and incompetent, and also especially what the witness has said with reference to written documents, on the ground that the written documents are the best evidence.

CROSS-EXAMINED BY MR. BENEDICT:

Q. The *Bourgogne* left New York at a quarter of one on Saturday. When was the first change of the time? A. At midnight Saturday.

Q. How much change was then? A. Twenty minutes.

2656 Q. When was the next change? A. Noon of the next day.

Q. And the same time? Twenty minutes? A. I don't know; it was Sunday at noon, at the hour according to the bridge.

Q. Don't you know how much the change was at noon? A. I don't recollect.

Q. Wouldn't it be the same as it was the night before? A. No; it depends on the distance run; it is the difference in longitude that settles that.

Q. Was there any difference between the two runs from Saturday noon to Saturday night, and from Saturday midnight until Sunday noon? A. I
2657 can't recollect that; I don't know.

Q. Do you know anything that would have lessened the speed of the engines during that time? A. No, I don't recollect anything.

Q. Was there a change in the time at midnight of Sunday night? A. Yes; I did it myself.

Q. How much was it? A. Twenty minutes always; it is the engineer of the second watch who does that.

Q. Did you hear the testimony of the last witness? A. Yes; the one who was here just now.

Q. You heard him testify that the siren was blowing during almost all the time from the time he
2658 turned in? A. Yes.

Q. Was he telling the truth, or not? A. No; it was going at about three o'clock; but from midnight till two o'clock it was not blown.

Q. You say now that the siren was blowing at three o'clock? A. I don't know; I was asleep.

Q. Did you testify before the English court that at three o'clock the weather was clear? A. At two o'clock.

Q. Did you not testify that it was at three o'clock? A. I said at two o'clock; I turned in at a few minutes of three o'clock.

Q. Did you not testify before the English court 2659
that at three o'clock the siren was not blowing? A. No, I did not. I didn't hear it blowing; ask me then whether I said yes or no; whether it was blowing or whether it was not blowing.

Q. Did you not testify before the English court that at three o'clock the siren was not blowing; do you say yes or no? A. I couldn't have said that, because I was turned in at three o'clock; from two to three I didn't hear any siren.

REDIRECT-EXAMINATION BY MR. JONES:

Q. I would like you to be a little more explicit 2660
about the change of twenty minutes in the engine room from the bridge time. Do I understand you to mean that this change was made from the time of the bridge clock, as regulated by observation at mid-day? A. Yes, at mid-day; from noon till midnight the clocks should agree; after that there might be a little difference between them.

Adjourned to December 12th, 1901, at 4 P. M.

NEW YORK, December 12, 1901.

Met pursuant to adjournment.

2661

Present, Mr. JONES, Mr. R. D. BENEDICT, Mr. MURRAY.

OCTAVE FELSENBERG, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you reside? A. In New York City, 34 East 44th Street.

Q. Are you engaged in any business? A. In the commission trade.

2662 Q. What is your place of business? A. I have none just now; I was in the coffee business, importing from Colombia, South America; but now you know business is at a standstill owing to the revolution.

Q. Have you been in any other business in New York besides that? A. I was when I came first; in the banking business.

Q. Connected with what house? A. Heidelbach, Ickelheimer & Company.

Q. That is one of the largest foreign banking houses in New York? A. Yes.

Q. Have you ever travelled with the French line?
2668 A. Yes.

Q. I mean by that the steamers of the Compagnie Générale Transatlantique? A. Yes, I always travelled by those steamers except once I went to England in 1891 by the Cunard Steamship Company.

Q. Do you recollect how many voyages you have made? A. I made three voyages since I came over here; one by the *Champagne*, one by the *Umbria* of the Cunard Line, and the last one by the *Bourgogne*.

Q. Did you ever make a trip by the Compagnie Generale Transatlantique steamer *La Normandie?* A. No.

Q. Who commanded the *Bourgogne* when you
2664 made this trip by her? A. Captain Deloncle.

Q. What was the voyage? From New York to Havre, or Havre to New York? A. New York to Havre.

Q. What steamer did you come back by? A. I came back by the *Champagne*, in February the next year.

Q. It has been said in this case that the steamers of the Compagnie Generale Transatlantique are and have been habitually run at full speed in a dense fog at sea. Do you know anything about that? A. Well, from what I observed the last time I was on

the *Bourgogne* they slackened the speed during fog 2665
when they came to the Banks, and we had about two days' fog, thick fog. And I remarked that during that fog they always blew the siren and slackened speed. I made that observation because I couldn't sleep at night when that siren was blowing; it made me nervous, and I went on the deck and I found that we were not going so fast as usual.

Q. How did you note that fact, and you may state what indicated it to you? A. I noted it because you can see by the impetus of the ship the speed we had, and we could remark it if we didn't think the speed was so great.

Q. Did you notice anything of the beating of the 2666
engines? A. Well, about the engine you know of course I am not technical as an engineer, naturally; but I remarked that the engine was not going so quick as usual, by the noise of the strokes of the piston going to and fro on the deck you notice the noise that the pistons are making.

Q. But what did you notice about that? A. That they were not striking so quick as usual.

Q. Did you notice anything in connection with the distance run which is posted up in the companionway? A. That I don't remember; I don't remember; I may have noticed.

Q. Do you remember whether on that voyage the 2667
steamer made the same number of miles per day in a fog, in foggy weather, as well as in clear weather? A. Oh, no; I don't think they ran so quick in foggy weather.

Q. The question is did you notice? I merely want your recollection about that? A. I don't remember exactly you know; I know that when the weather was dark or foggy the speed affecting the number of knots was not so large as when the weather was clear; that is from my recollection.

Q. Were you acquainted with Captain Deloncle?

2668 A. I was not acquainted with him at all, except that I was at the same table with him; he presided at one table you know.

Q. And you sat at that table? A. Yes, I sat at that table.

Q. Did you observe his general attention to his duties as captain? A. Oh, yes; I thought that was one of the best captains I had met with you know, in going across. I noticed that when the weather was rough or particularly when it was foggy he was not at the table and didn't preside at the table that day. He was on deck.

Q. Can you relate any other thing that came
2669 under your observation that satisfied you as to his efficiency as a commander?

Objected to as incompetent.

A. Yes, he told us in talking about distances, and I noticed once we were asking him when we should reach land, when we should sight land, he said that we couldn't know that until the next day; by making soundings at six o'clock the next day on a certain bank in the ocean, he said we should arrive there at six o'clock, and if we were on that spot at that time he could tell us exactly when we should reach land, and I thought that was a very able navigator to say such a thing.

2670 Q. Did he make those soundings? A. He made those soundings, yes; and we were on the spot, and he said the next day at eight o'clock we should see the Scilly Islands, and in fact that was so. From my observation I should think he was an able seaman.

Q. If I understand you right you are not one of those who are afraid to trust their lives in the care of the French Line are you? A. No, because I think those accidents could happen to any other line. In the English line I travelled once, and I don't think

they are more disciplined or more skilful in that 2671
than in the French Line.

Q. You may state what was your general impression as to the discipline of the officers and men on board the French steamers that you have crossed on; I mean of course the steamers of the Compagnie Generale Transatlantique?

Objected to as incompetent and immaterial.

A. I have seen them on deck, and there was always sailors going to and fro, and I saw once a drill of the lifeboats; they made a drill of the lifeboats once.

Q. On what steamer was that? A. On the *Bourgogne.* 2672

Q. You saw one boat drill? A. Yes, I saw one boat drill; or rather, the boats drill.

Q. Was this boat drill at sea? A. Yes, sir; it was about the fifth day, so far as I can remember.

Q. What did the men do with the boats? A. They looked if it was provisioned right; there was a big preserve box painted red, so far as I can remember.

Q. Were the boats loosened from their chocks? A. They tried the ropes, yes, and they turned the davits.

Q. So that the boats were free of their chocks? A. Yes, I asked one of the boatswains—what you call the boatswain, what was the meaning of that, 2673
and he said there was a regulation that they had there.

CROSS-EXAMINED BY MR. BENEDICT:

Q. When did you come to this country first? A. First I came in 1888.

Q. By what steamer did you come? A. I came by the *Egypt;* the National Line.

Q. You say you were connected with Heidelbach, Ickelheimer & Company; in what capacity? A. As French correspondent.

2674 Q. Corresponding clerk? A. Yes.

Q. How long were you there? A. I was there about a year.

Q. How long ago was that? A. That was in 1888 and 1889.

Q. Since that have you been in the commission business all the while? A. Yes, sir.

Q. When did you go back to Europe after you came over? A. I went back to Europe in 1891 by the *Umbria*.

Q. Do you remember what time you went over? A. Yes; that was in the month of May, the 8th or 10th of May.

2675 Q. When did you come back from there? A. I came back in September by *La Touraine*, 1891.

Q. On *La Touraine?* A. On *La Touraine;* yes, sir.

Q. Do you remember who was the captain of her? A. No, I don't remember his name.

Q. Did you ever go over again? A. Yes, I went by *La Bourgogne* in 1898.

Q. What time was that? A. That was the 7th of May; the last voyage before she foundered.

Q. When did you come back? A. I came back the next year by *La Champagne* in February; I sailed from Havre on the 28th of January, and came back here on the 7th of February.

2676 Q. Do you remember what date you arrived in Havre? A. Yes, I think that was in the 19th or 20th of May.

Q. Sailing on the 7th and arriving on the 19th or 20th, taking twelve or thirteen days' voyage; that is too much, is it not? A. Yes; I don't remember exactly the date; I think it was the 15th or 16th or something like that; I don't remember.

Q. Do you remember what day of the week it was? A. Yes; that was on Sunday morning.

Q. Do you remember whether, when you arrived

at Havre, you arrived so as to have to lie at anchor 2677
before you could go into the port? A. No, we went right in.

Q. So that the tide served for you to go in when you got there? A. Yes, sir.

Q. Do you remember what time in the morning it was? A. That was very early in the morning; at six o'clock.

Q. Did you get up before she went into port? A. I was already up.

Q. How long had you been up when the vessel got into the port? A. About an hour or so.

Q. Do you know whether she hadn't been lying at anchor before that? A. Yes, I know that we 2678
were going when I got up.

Q. Do you know whether you hadn't been lying at anchor before that; before you got up? A. I don't know about that.

Q. Do you know how many turns of the engine the *Bourgogne* generally made? A. No, I am not technical about that.

Q. You never counted them? A. No, I never counted them.

Q. Was there any indicator anywhere that you could see that said what speed there was? A. I don't know; I didn't go in the engine room.

Q. But I mean on deck? A. No, I didn't see any 2679
indicator.

Q. You didn't keep any memorandum of the runs that the vessel made during the day? A. No; I may have—no, I didn't keep it; I may have known it, but after I left the ship I didn't care much about it.

Q. Do you remember what day it was when you left New York on the *Bourgogne?* It was Saturday, was it not? A. Yes, Saturday; we left the dock and we lay at anchor for a few hours in the bay; that was during the war and they didn't want to

2680 go out to sea unless it was high tide, on account of the torpedoes.

Q. About how long did you lie at anchor? A. She laid from—we laid at anchor—we left at ten sharp, and we got off Staten Island at about nearly eleven, and we stayed there until five o'clock. We went to sea at five o'clock.

Q. Do you mean you went out from Sandy Hook? A. No; from Staten Island.

Q. Do you remember about what time you went out by Sandy Hook? A. Yes, it was about seven o'clock; not long before dusk.

Q. You say that you sat at Captain Deloncle's
2681 table? A. Yes.

Q. Was he usually present at all the meals? A. He was present when the weather was fine.

Q. At how many meals a day? A. We had—he was really present at two meals; we had three meals, but in the morning at the light breakfast he wasn't there. At dinner time and supper time he was there.

Q. Can you tell how many days the captain was absent on that voyage, from the table? A. That I don't remember.

Q. You couldn't tell that? A. I couldn't tell that, no.

2682 Q. You talked with him when he was at the table? A. Yes; or when he was promenading on the deck.

Q. Did you ever talk with him at any other time than at table? A. Yes, on the deck, when he was promenading.

Q. Was he often promenading the deck so that you could talk with him? A. When the weather was very fine, in the middle of the day, we had a little chat.

Q. When was it that you asked him when you would see land? A. That was about Friday.

Q. What do you say it was that he told you? A.

He said that he could say exactly when we came to 2683
a certain spot in the ocean, where he could throw the lead, and take the soundings.

Q. Did he mention the spot? A. He didn't tell me the name of the spot, but it appears that it was some place in the ocean known to navigators.

Q. But it was some place where they could sound? A. It was some place where they could sound.

Q. And that is all you know about it? A. Yes, that is all I know about it.

Q. Did he tell you when he expected to reach that place to take soundings? A. Yes, he said that he expected to reach the place on Friday at six o'clock. 2684

Q. Do you know whether he did reach it on Friday at six o'clock? A. Yes, he reached it exactly at the time that he said.

Q. And then told you what time he thought he would see land? A. Yes; see the Scilly Islands. Early in the morning—not exactly early; I mean in the morning of Saturday; sometime before noon; ten o'clock or something like that.

Q. Was it after that that you had the fog that you speak of? A. No; that was before.

Q. Do you remember what days it was that were foggy? A. It was foggy the third day out.

Q. Was that the only day? A. It was foggy that 2685
day and the next day, but the fog was not so thick the next day; we were on the bank of Newfoundland.

Q. You were not three days on the Banks? A. One day; but this day—the next day it was a little foggy; not so thick as the day before.

Q. On that day did there seem to be any slowing of the speed that you speak of? A. Yes; I remarked it.

Q. On the day that the fog wasn't so thick? A. When it was thick.

2686 Q. But on the following day? A. On the following day it wasn't so thick, and the speed was, I think, not slackened very much.

Q. Now this boat drill that you speak of, that you say was about the fifth day? A. About the fifth day; yes, sir.

Q. What time of day? A. Well, that was during the day; I don't exactly remember whether it was ten o'clock or two o'clock; we were all passengers, promenading, and we remarked that; we felt interested in seeing that drill, and that was the reason why I noticed it.

Q. Tell me what you say; you only saw one boat
2687 I suppose. A. The boats are far separated from each other, and of course we saw the boat that was just where we were standing on the deck.

Q. Tell me what you saw about that boat? A. We saw some men coming; about six sailors, four or six sailors, and they began to try the ropes, and they turned the davits and the boat out, and they lowered the boat to a certain extent. And they put it back again, and I remember that they had some boxes of provisions, or I should say canned goods, large cans, painted red; that is what I remember; and I asked the men what was in there, and they said there was some preserves in there in cases.

2688

By Mr. Jones:

Q. You mean provisions, don't you? A. Yes—well, provisions, I suppose that is the same.

By Mr. Benedict:

Q. You say that there were half a dozen men engaged in the work about this boat? A. Yes.

Q. How long did it take them to get the boat out so they turned the davits? A. I think a quarter of an hour.

Q. What did they do? Can you tell exactly what 2689
they did to get the boat outside, before they began to lower it? A. Yes; they took some hooks out, and then they tried the rope and turned the davits out, and turned the lifeboat out. They lowered it say a few feet, and then they put it back again.

Q. After they got the davits turned out how long did it take them to lower it and raise it again? A. The operation lasted altogether about a quarter of an hour; the whole thing.

Q. How long do you say it took them to get the davits turned out? A. Half the time perhaps; it took part of the crew.

Q. Was there any officer there? A. There was an 2690
old sailor that was superintending; I should suppose he acted as the boatswain.

Q. Did he have a uniform? A. No; he had a cap; he had no uniform except that regular shirt they wear on the Transatlantique boats.

Q. Did he take hold of the boat too, to help the other men? A. He superintended.

Q. He gave orders then? A. He gave orders then.

Q. He didn't himself do any part of the work? A. No.

Q. But the men were engaged doing the work? A. Yes; and I remember very well what they were 2691
doing, because I asked a fellow there that used, during the trip, to talk with me very often; he was a Parisian, a jolly fellow, and he was just engaged in that work of lowering the boat, and he told me what those big can boxes were.

Q. He was one of the crew? A. He was one of the crew.

Q. Or was he an officer? A. No; he was a sailor.

Q. Do you remember whether these men were part of them at one end of the boat, and part of them at the other? A. Yes.

2692 Q. About the same number at each? A. Yes, I suppose so. Of course I made the remark of that particular boat where we were standing.

Q. Of course. I am speaking about that boat alone. Do you know what number the boat was? A. No, I don't remember.

Q. Whereabouts on the ship was it? A. It was what you call the starboard.

Q. The right hand side? A. Yes, the right hand side; the starboard side; that was about the third lifeboat on the starboard side.

Q. The third from the bow? A. Yes.

Q. How did they turn the davits? A. They
2693 turned to this side (indicating).

Q. Did they simply push them out by hand? A. That is very obscure in my mind; I suppose they did; but I may be mistaken about that.

Q. The counsel for the company asked you if the boat was taken off the chocks. Do you know what the chocks are? A. That is those pieces of wood on which the boat reposes, I suppose; yes, they were off the chocks; the boat was taken off from the chocks.

Q. What was the weather on the other days of the voyage that you have spoken of? Pleasant weather? A. We had fog—well, the first day out—
2694 let's see. The weather was not exactly rough you know; it was not calm, but it was not rough neither; the following day was pleasant, and the third day was foggy; the fourth day was a little foggy, but not so thick, and the rest of the voyage was calm weather; fair weather.

Q. Are you seasick when you go to sea? A. No, never, never, fortunately.

Q. Do you know whether on that voyage the *Bourgogne* took the southern route or the northern route? A. I don't know.

Q. How do you know then that the ship was on 2695
the Banks? A. Because it was told to me.

Q. Who told you? A. I suppose some officer; perhaps Capt. Deloncle himself.

Q. You don't remember who told you? A. No; everybody knew it.

Q. Did you have any talk with Captain Deloncle while the fog lasted? A. No, because he wasn't on deck at that time; he wasn't down there; I had no occasion; he was on the bridge.

Q. When you came back on the *Champagne* what sort of a voyage did you have on her? A. Very rough; that was from the 30th of January to the 7th of February. 2696

Q. Do you remember whether there was any fog? A. It was terribly rough; there was fog; it was foggy about three days before coming to New York; but not a thick fog; an occasional fog, which necessitated to blow the siren also.

Q. What time did you leave Havre on that voyage? A. We left Havre at eleven o'clock in the morning; on the 29th or 30th; it was Saturday.

Q. What time did you arrive in New York? A. It was the 6th or the 7th.

Q. What day of the week? A. That was on Monday evening.

Q. It had been rough weather all the way? A. 2697
All the way.

Q. Do you remember which way the wind was? Head winds? A. Head winds.

EUGENE PAGNON, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you live? A. In New York; 178 Fifth Avenue.

Q. Are you engaged in any business? A. Yes; I

2698 have power of attorney for an importing house, and also silk importer.

Q. What house is that? A. Bonnet Kobbé & Company.

Q. That is one of the largest manufacturers of silks in the world, is it? A. Yes; I think so.

Q. Have you ever travelled by the steamers of the Compagnie Generale Transatlantique? A. Very often; say more than sixty times.

Q. Have you crossed on the *Bourgogne?* A. Yes; I have crossed on the Bourgogne.

Q. When was that, to the best of your recollection? A. To the best of my recollection it was
2699 about ten or twelve years ago when I crossed on the *Bourgogne;* ten years ago. In fact I crossed in every steamer of the company except the last one.

Q. When did you make your last trip? A. My last trip I made three years ago.

Q. On what steamer? A. I went by *La Touraine* and I came back by—I don't remember; Captain Fajolle was the commander; you see I am so much used to crossing I never pay attention to the steamers.

Q. It has been stated here in behalf of persons claiming against the French Line that that company were in the constant habit of running their steamers at full speed in dense fog at sea. Please state
2700 whether you know anything about that, and if so what? A. Well, from my own long experience I can state that I have seen very often, not to say always, a reduction of speed in case of dense fog; sometimes I counted myself the revolutions of the engine; in the old time when they had side-wheelers it was very easy to count; the revolutions were less numerous. At that time I remember pretty well that when there was a reduction of 20 per cent. we considered it fair. With the screw steamers very often I have seen, and I can be a witness to it, a

sensible reduction; 15 to 20 revolutions, as far as I 2701
can remember. I think I have seen more too. I have seen those steamers stop in case of fog, and when I was talking to the captain he told me "I think it is safer. I don't know now that there may not be some vessels in the environment"; and usually this was when we were near the lightship here, or when we were in the channel, the English Channel. There is certainly the greatest attention paid to the fog; this is about my experience.

Q. How about reduction of speed, if you have observed any on the Banks or about the Banks, or in mid-ocean? A. Yes; very often; I have seen reduction under the same circumstances. I have seen 2702
diminution of speed, coming nearly to a stoppage, in a place which is called by the French navigators the Banquereau; the small banks, which are north of the large banks. I have seen a steamer there stop entirely on account of the fog, and when the fog disappeared then we saw a few fishermen there, and they were very glad to have stopped; I can go as far as to tell you that one day one of those fishermen sent us two codfish; he threw them on board.

Q. How about reductions of speed in other parts of the ocean, if you remember; tell what you know about that? A. Well, in fact I don't think I have seen any part of the ocean where they did not dimin- 2703
ish in speed in case of severe fog. And sometimes it happened to me to spend twelve days in a journey which we could have made in that steamer in nine days; because constantly we were going at reduced speed, except when there was a little opening.

Q. Would not that experience and observation extend up to the time of your last voyage? A. Exactly sir; from the beginning to the end.

Q. And you made your last voyage about three years ago? A. About three years ago.

Q. Do you remember about observing the drill of the men with lifeboats? A. Yes, sir; pretty often.

2704 My memory brings to me a few cases in which the drill has been done in my presence. I used to tell the purser to be kind enough to let me know when he would have such a drill. It is always interesting; and very often it took place—two or three times I saw it take place at night when all the passengers were abed, and they explained to me that they did not want the passengers to be rendered nervous by this drill; but they told me that and I witnessed those drills, which consisted in calling all the sailors on deck, having all the waiters come to their places near the boats (canots), putting their life preservers on—the waiters—and then I have
2705 seen sometimes the boats, or two or three of them, being opened to verify what was in them. Then they would connect the hose and then I have seen a very fine spray of water sent to the sea. I have seen a drill in which we stopped in the center of the ocean, and it was made by Captain Fajolle, who wanted to see in what time his men could put the lifeboats in the water; so he had the whole thing tried in my presence. And one side it was a little quicker than the other, by a few minutes.

Q. Just describe in your own way what manœuvres the boats themselves were put through in the way of swinging them on their davits, and removing them from their chocks? A. You know
2706 how those boats are made. They are usually inside the steamer; you have to revolve the two trees which hold them, and put them out of the perpendicular of the steamer. Then they have to uncover those boats; usually find in those boats a barrel of water, which is bound to be there; some casks which I have been told contain biscuit, and then the sailors who belong to that boat—and every sailor knows exactly what boat he must go in, in case of an accident—they must be there, and I have seen them jump in the boat, take off the oars, and be ready to

put the boat in the water, lower it. One I remember, it is about ten years ago, that drill took place at night; and one of the pursers with whom I was well acquainted, told me after the drill, when I complimented him, "Well, it is all right; but I got a big shake-down from the commander." "Why?" I asked. "Because I sent my waiters there, but I didn't send provisions to the boats. He said to me I was to; my duty was to provision the boats at once, even if it is a sham exercise. This time I thought I would go without and I was reported." Then after the exercises I have seen the commander praise the men who had their boats the first in order, and besides scold the men who were slowest. That is about all I see to cover the question. 2707 2708

Q. In these instances of fog, to which you have referred, did you also observe that the steam whistle, or siren, was sounded? A. Oh, too much, and very often, because it is a very disagreeable feeling during the night, and I have heard it many and many a night, and many and many a day; it is a dull sound, and passengers as a rule don't like it; but I have never seen any fog of any importance without hearing that siren. I have crossed about twenty times on other steamers, on other lines, and just so as to be able to make a comparison between the French Line and the other lines; being a regular traveller, and I wanted to know a little of everything, and principally how the other lines were comporting themselves, and I never found on any other line more system and more care than I have found in the French line. 2709

Cross-examined by Mr. Benedict:

Q. What is your age? A. Sixty-three, I am sorry to say.

Q. How long do you say you have been crossing?

2710 A. I crossed eighty-seven times; I came here in 1866 for the first time.

Q. Have you crossed every year? A. Sometimes I crossed four times a year, and sometimes, one time, I crossed six times; but I spent five years here without going there, and five years in France without going back; but for that I would be more than a hundred trips.

Q. Your last voyage was three years ago? A. Three years ago; yes, sir.

Q. Before that how had your voyages been? A. I crossed three years ago, and before that had stopped three years; then, after those three years
2711 going backwards crossed four or six times in one year; and twice another year, and then I stayed in France five years; but before I used to cross regularly four times a year.

Q. You haven't been on the *Bourgogne* during the last ten or twelve years? A. No, I have not.

Q. You spoke of the time when the vessels were side-wheelers? A. Yes.

Q. How long do you make the time since there were any side-wheelers? A. If I remember well, we had side-wheelers in 1870 to 1874, as far as I remember.

Q. Since the present style of steamers have been running do you know what has been the rate of the
2712 strokes of the engine at full speed? A. It is pretty hard for me to say, because they vary—if I am well informed—according to the steamer. Some give more revolutions than others; indeed the *Champagne* and *La Bourgogne* and *La Bretagne* and *La Gascogne* are expected to give something in the environment of 68 or something like that, full speed. I wouldn't swear to that; but when I was on board the steamers I knew it very well, because I said "How many revolutions are you going," and I would get the answer.

Q. You have spoken of what you call a sensible 2713
reduction? A. Yes.

Q. What are the limits that you give to a sensible reduction? A. I think I said also 20 per cent. and more; but usually I think 20 per cent.; at 70 revolutions 20 per cent. would make it 56, and sometimes it went lower.

Q. Are you prepared to swear that you can say that there has been reduction of speed more than 20 per cent. in fog? A. Sometimes, sometimes, yes; I went so far as to state that I have seen the boat stop.

Q. I wasn't asking about stopping; I was asking about reductions of speed of the engines. A. I 2714
have seen it go very slow; that is all I can swear; very slow; say not half; very seldom; I have seen them go carefully, feeling their way and anxious and desirous to avoid any mishap.

Q. Those cases have been, as I understand you, in the English Channel, or approaching the lightship? A. And also in the Banks, where they often would have a great many fogs you know; everywhere where there is fog.

Q. You can't of course specify any particular voyage? A. No, but I specify that in every voyage; I have seen it in every voyage.

Q. Can you specify any voyage on which you have seen a reduction of more than 20 per cent.? A. 2715
Specify.

Q. Yes; that is very simply? Say yes or no. A. Give the name of the steamer, or the date?

Q. Yes; either. A. No, I can't; from memory; my memory doesn't expect to do that.

Q. I didn't suppose you could; that is why I wanted you to say. You have spoken of occasions when there have been stoppages of the vessel. A. Yes.

Q. Do you know whether there were other ves-

2716 sels near the steamers on those times? A. Not particularly; when I have *known* of other vessels.

Q. Otherwise you haven't known whether there were other vessels or not? A. No.

Q. You spoke of some time when there was almost a stoppage at the Banquereau? A. Yes.

Q. How long ago was that? A. That was say twenty years.

Q. That was the time, wasn't it, when the fisherman gave you the codfish? A. Yes.

Q. When was the time when you say that a vessel took twelve days instead of nine for a voyage? A. I cannot give you the date; but I can tell you the
2717 steamer; it was the steamer *France;* and it was Captain Danre.

Q. Do you remember what season of the year that was? A. It was very likely about March; during the equinoctial weather, but we had it very foggy all the time.

Q. Was it stormy or smooth water? A. No, it wasn't stormy; it was more lack of observations.

Q. About how long ago was that? A. Well, I suppose fifteen years.

Q. Was she a screw, or side-wheeler? A. Oh, a screw steamer.

Q. Now I understand you to say that one boat drill that you speak of, did I understand you aright,
2718 to say that you timed the boats to see? A. Yes, sir.

Q. How much time did they take in getting the boats into the water? A. Some boats went in less than fourteen minutes; from one side; and the other took three or four minutes more.

Q. How many men to a boat? A. The full complement; I saw about eight or ten men; maybe twelve; I don't know.

Q. And they were all busy getting the boats out during that time? A. Yes.

Q. Were they at work at both ends of the boat? A. Yes, sir; all around the boat.

Q. Can you tell exactly what they had to do to 2719
get the boats out? A. More or less; I will tell you what I know; they have first to undo those ropes which tie the boats.

Q. The covering of the boats do you mean? A. No; which command a boat; they have to cut the small twines which secure those boats in ordinary times, when they are not in use. Then they undo the hooks which fasten the linen cover and they uncover it, and then they take the oars and two men go in the boat, and the others push the boat out, and some are detailed to hang to the principal rope, and they wait for the commandment and when they are ready there is a command to let go, 2720
and down goes the boat; just the same they do when I have seen them do in case of accident, or when they want to pick up somebody, or a pilot, or to pick up sailors in perdition (shipwrecked).

Q. Can you tell how they loosen the ropes so as to let the boat fall? A. By untying the rope, and by letting the boat go by its own weight; the boat is held by both sides, and down goes the boat, and some people are holding the rope and giving way till it goes down; the boat slides.

Q. Do the ropes go through blocks? A. Yes, they go through pulleys.

Q. Are these blocks fastened to hooks? A. I sup- 2721
pose so.

Q. Do you remember anything about it? A. I have seen them so often——

Q. I know; but do you remember anything about it? A. Do you mean to say——

Q. I am asking you whether these blocks are fastened to hooks? A. I have seen hooks there; which were above the blocks.

Q. Were those blocks cast off from the small boat? A. If the hook is under them—I don't know the arrangement; I know they lower the boat; I

2722 know there is a hook, but I don't know if the hook is upper or under; if the hook holds the block, or if it is under.

Q. On these occasions that you speak of the boats were never cast loose from the ship? A. I have seen one boat cast loose, all was ready——

Q. How long ago was that? A. Three years; the boat—one boat was cast loose and went into the water.

Q. Did it go into the water so it was away from the ship? A. Not away; it was still hanging to the ship, but it was ready to pull.

Q. But it was still fastened to the ship? A. Still
2723 fastened; but only one rope to let go.

Q. How long ago was it that you saw this under Captain Fajolle? A. That was three years ago.

Q. On what vessel? A. I don't remember; I ought to remember, but I don't.

Q. Was it the *Champagne?* A. I don't remember which of the vessels; I was so often in every one of them.

Q. At that time were any of the boats cast entirely off from the ship? A. Yes, as I told you; ready to pull.

Q. One, or all of them? A. All of them suspended at a certain distance from the water; one touching the water.

2724 Q. I understand you that when that was done the steamer was at a stand-still? A. At a stand-still; at noon.

Q. Can you give us any more closely than three years ago? A. Not more closely; but I can find it from my memorandum book.

Q. Do you remember whether it was on a voyage from New York or a trip from Havre? A. From Havre.

Q. Coming this way? A. Coming this way; and they told me that they had always done it in port, but they wanted to do it on the open sea.

Q. You say that it is about three years ago? A. 2725
About three years ago.

Q. That would be since the loss of the *Bourgogne?* A. It might be.

Q. On thinking of it don't you remember that it was after the loss of the *Bourgogne?* A. Yes.

Q. Can you tell us any voyage within the last ten years when you have made any count of revolutions with reference to the question of reduction of speed? A. I cannot give you names of instances, but I can tell you that I did during the last ten years count the revolutions nearly every time I go on a steamer.

Q. My question was with reference to your count- 2726
ing with special reference to the reduction of speed? A. That is it; yes, sir; yes, I did, but I cannot tell you on what steamer.

Q. Nor can you tell how many revolutions the steamer was going in full speed? A. Exactly, no; I cannot.

Q. And you can't tell how many revolutions they were making at reduced speed? A. Not now; I knew at the time; I saw the diminution at the time.

REDIRECT-EXAMINATION BY MR. JONES:

Q. I understand you to say that in one case when you timed the men in their evolutions with respect 2727
to lowering the lifeboats that it took some fifteen minutes to lower them into the water? A. To have the whole thing ready, yes; to have the whole side; all the boats of one side; and the other was ready much quicker; a few minutes quicker.

Q. How much quicker? A. I think I said twelve minutes on one side.

Q. Did you ever cross with Captain Deloncle? A. No, I didn't cross with him.

Q. You have no acquaintance with him? A. No.

2728 Q. You have been particularly asked about the boat drill on the voyage you made with Captain Fajolle; state whether or not you witnessed the same evolutions attending boat drills prior to that time? A. I don't remember to say particularly; but I have seen boat drills principally in connection with the fire drills.

Q. Over what period of time in your experience, in travelling by the French Line, has that extended? A. Ever since I travelled; I have seen it often.

Q. Do you remember crossing on the *Bourgogne?* A. Yes.

Q. Did you ever see the boat drills on her? A.
2729 I think I saw on the *Bourgogne* the usual drill; Sunday drill they used to have; which consisted in having every sailor come before the boats in which he was to go in case of an accident, and also the waiters and also the firemen; they used to do that every Sunday in that old time; about ten years ago; and I have not seen it since. And I remember I have asked which will be my place in case of an accident; well, such a boat, according to the number of your state-room.

Q. In these boat drills that you saw prior to as well as since the loss of the *Bourgogne,* state whether or not you observed any difficulty in the lowering of the boats in the way of fastening or
2730 keys or locks, or chains? A. No special difficulty; still, I am not a sailor, but I always thought such manœuvre could be made quicker, as a landsman; but I have been in other steamers, and I have seen cases where they had to send down a boat for an accident for a man falling overboard, and I found it took a great deal of time too.

THOMAS DIBB BENSON, being duly sworn and ex- 2731
amined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. Where do you reside? A. 34 East 23d St.

Q. What is your business? A. I am agent for a French silk house.

Q. What is the name of the house? A. Delaitre.

Q. Are you a Frenchman? A. I am an Englishman.

Q. Have you ever travelled on steamers of the Compagnie Generale Transatlantique? A. Very often.

Q. Do you recollect about how many voyages 2732
you have made? A. Yes, I have made 56 on the French line.

Q. Have you travelled by other lines? A. Yes.

Q. English lines? A. Yes, I have travelled on the Cunard line and the Guion. Those are the only two English lines.

Q. It has been asserted in this case on behalf of the claimants that the steamers of the Compagnie Generale Transatlantique were habitually run at full speed at sea in a dense fog. Will you please state what, if anything, you know about that? A. Well, I should say it isn't true. I certainly have several times gone to look at the indicators in dense fog 2733
and found that the speed had been reduced in a fog.

Q. Was that at sea? A. At sea.

Q. Did you notice any particulars in regard to the reduction of speed in those instances? A. Well, it was because I thought that there were a fewer number of revolutions that I went to look at this indicator. It was that that prompted me to go and see.

Q. About what reduction have you observed as far as you can recollect now in the number of revolutions, and also as indicated by the indicator?

2734 A. The indicator was very often to half speed or even lower than that, down to what they call slow.

Q. How about the engines at that time? A. Of course, passengers have no way of judging that. You can easily tell whether there is fewer revolutions if they stop the machinery or say run ten revolutions a minute less; the difference is perceptible.

Q. Do you remember on those occasions of reduction of speed in a fog any variation in the number of miles run per day as shown by the card posted up in the gangway? A. Oh, yes, there is a decided difference.

2735 Q. To what extent in miles, as near as you can recollect? A. Well, that would all depend on how much fog you had.

Q. Then I understand that you can't remember any particular instances? A. Oh, certainly not, no; I couldn't, no.

Q. Have you seen any boat drills on the steamers of the French line? A. No, I can't say that I have seen any drills.

Q. Any lowering of boats? A. Yes, that I have seen.

Q. That is what I mean. A. Oh, yes, if that is what you mean by drills, that I have seen.

Q. How many times? A. Three.

2736 Q. Are you in the habit of getting up early in the morning? A. No, sir.

Q. Then if other boat drills than those that you have seen took place early in the morning or in the forenoon you probably would not see them? A. I should not see them.

Q. What did they do with the boats when those drills took place? A. You refer to this lowering of the boats?

Q. Yes. Describe as well as you can. A. Well, I think it was all done in a sort of a hustle, one

scarcely remembers. The boats that I saw lowered 2737
are boats that are kept swinging over the water and they were simply manned and lowered. The fellows rushed out in three cases of emergency.

Q. Do you remember instances of delayed arrivals at the port of destination in consequence of fog? A. Yes.

Q. Many of them? A. Oh, it has occurred several times in the number, of course.

Q. You say you have travelled on the Cunard line and on the Guion line? A. Yes, sir.

Q. State whether or not you observed any difference in the general discipline on board the French line from these other lines that you have travelled 2738
by?

Objected to as incompetent and immaterial.

A. Certainly not; I noticed no difference.

Q. You are not one of those that are afraid to go to sea in one of the ships of the French line? A. I don't think I should have stuck to it 56 times if I had been afraid.

Q. Over what period of time has your period of travel on the French line extended? A. I commenced in 1885 and have crossed four times a year since.

Q. Do you remember the loss of the *Bourgogne?* A. I do. 2739

Q. Did you ever cross on the *Bourgogne?* A. I did.

Q. Do you remember the name of the captain? A. Oh, I crossed under three captains at least on the *Bourgogne.*

Q. Can you remember the names of any of them? A. Franguel was the first one.

Q. Do you remember Captain Le Boeuf? A. I also crossed with Captain Le Boeuf, certainly.

Q. Did you ever cross with Captain Deloncle? A. Not on the *Bourgogne.*

2740 Q. Did you ever cross on any steamer commanded by him? A. Yes, on the *Normandie*.

Q. How long ago was that? A. I really can't say that. I should say between four and five years, but I couldn't fix the date for that. Don't take that as being exact; but I should think between four and five years.

Q. Did you notice any difference in Captain Deloncle from the other commanders of the French ships? A. Nothing.

Q. Did you notice any difference in discipline in his ship from that of other captains? A. None whatever.

2741 Q. I suppose you can't recollect whether there was any fog on that voyage? A. I really couldn't say.

Q. Do you remember whether you noticed any boat drills on that voyage? A. No, I don't remember that.

Q. What do I understand by that; that you simply don't remember the particulars or that there were none? A. There may have possibly been drills, but I don't remember them.

Q. Do you remember any instance of emergency such as a man falling overboard or the rescue of shipwrecked sailors, of the lowering of one or more lifeboats? A. Yes, sir; three instances of that.

2742 Q. Can you recollect when they took place? A. I couldn't give you dates, no, I couldn't.

Q. Can you recollect about how long it took the boats to get out into the water on those occasions? A. How long it took to lower them?

Q. After the occasion to lower a lifeboat arose, how long was it, to the best of your recolletcion, that it took to free them from their chocks and get them into the water, about? A. In a case like that, of course the boat had to be turned around to go back to where the accident happened. For instance,

the last case I remember was on the *Bretagne*, when a man jumped overboard. By the time the news got up to the bridge we had probably gone half a mile, and the boat had to be turned around and brought back to as near as possible the place where it was supposed he dropped over. And meantime they had been preparing the boat to be lowered, and it was only a question of a minute or two, you know. 2743

Q. In these instances of fog and reduction of speed that you speak of, state whether or not you observed these before as well as after the loss of the *Bourgogne?* A. Oh, before, most decidedly.

Q. And since that time? A. And since also.

Q. You may fix the same period with respect to the boat drills; that is, were they before as well as since the loss of the *Bourgogne?* A. Two were before and one since. 2744

Q. I suppose in cases of fog you observed the siren or steam whistle of the steamers sounded? A. Always.

Q. I am inquiring about steamers of the French line? A. Exactly.

CROSS-EXAMINATION BY MR. BENEDICT:

Q. What is your age? A. 42.

Q. Did you ever follow the sea at all? A. No, only just in my business. 2745

Q. Only as a passenger? A. Exactly.

Q. You speak of 56 as your number; you count each passage as one number? A. Yes; 56 crossings on that line.

Q. How lately have you crossed on that line? A. In October.

Q. Of this year? A. Of this year.

Q. How often have you crossed on the French line within the last three years? A. Eleven times.

Q. You spoke of having gone to look at the indicator to see what the indicator said about speed.

2746 Where did you find any indicator? A. On the bridge and also one on the promenade deck.

Q. When was that, if you remember? A. I certainly couldn't give you dates.

Q. Was it within ten years? A. Oh, of course; certainly; oh, yes.

Q. Give me about when? A. The indicator is there and you can see that any voyage.

Q. You said that on one occasion you found an indicator on deck. I want to know about when that was? A. Five years ago to be—when we had a continuous lot of fog.

Q. Do you remember ever to have known what
2747 the full speed was and what were the number of turns which gave the vessel full speed in any one of these cases? A. During fog?

Q. No; I am asking the full speed of the vessel. Have you ever known the number of turns of the vessel's engine that would give her full speed? A. 60, as far as I could remember, on the four that all run together; the *Bourgogne, Champagne, Bretagne* and *Gascogne*.

Q. Do you get that knowledge from your own counting? A. Yes.

Q. You never counted more than 60? A. I can't say—no, 60 was as far as I remember what it used to average in those days.

2748 Q. An average at full speed? A. Yes.

Q. Is there an average at full speed? Don't she always make the same turns at full speed? A. I don't know; at full speed I suppose—in those days we used to reckon that her average number of revolutions were 60 a minute.

Q. Are you able to tell any number of turns that you have ever counted less than that? A. Except during a fog when we noticed a reduction.

Q. Can you tell any time when you have ever counted less than 60? A. I can't say any particular

trip, but I certainly have counted less than 60 sev- 2749
eral times.

Q. Can you tell how many revolutions you counted at any one of those times? A. I couldn't say; certainly not, I can't remember that exactly.

Q. Can you give us any estimate of how much less than 60 turns the engine was making at any of those times? A. Really, I should only be guessing at that.

Q. I don't want you to guess. A. I couldn't be exactly sure.

Q. You said, as I understood it, that if there were 10 revolutions a minute less you would perceive the difference? A. Yes. 2750

Q. Are we to understand that you can say that you have noticed a diminution of 10 turns less than 60 during fog? A. You understand when I say 10 it might be 10 or about that; it might be more. But when there has been a diminution of revolutions I certainly have noticed it so much as to go and see if there was really a diminution of speed as indicated on the indicator.

Q. My question is as to whether you can say at any time that you noticed that there was a diminution of more than 10 revolutions? A. I really couldn't say that.

Q. Can you tell any time when you have noticed as much as 10 revolutions' diminution when you 2751
have gone and looked at the indicator? A. This indicator doesn't give the number of revolutions.

Q. I understand that perfectly well and repeat the question. (Question repeated.) A. I certainly do remember that, but I couldn't say on what trip it was.

Q. When you have noticed ten revolutions diminution can you tell what the indicator stood at? A. I can't say from memory; I haven't that; it isn't so clear as all that.

2752 Q. Are you familiar enough with indicators to know what the lettering is on the face? A. Oh, yes; decidedly.

Q. Just give me the lettering on the face of the indicator, beginning at the top, and tell me what they are. Go right around. A. The chief ones that I know would be "demi"; that is half speed.

Q. That isn't at the top? A. No, that is "toute" —or hold on; Stop is at the top, Full Speed is at the bottom, and I say this, as far as I remember the indicators; Stop is at the top, Full Speed is down at the bottom, and Slowly and then Half Speed between. Slowly is the one next to the—no, there
2753 is "attention" first, then Slowly, and then Half Speed and then Full. That is as I remember.

Q. So that your memory is that there are four orders from the top to the bottom around on the right of the indicator? A. Yes, four on each side.

Q. Do you remember the French words? A. Yes.

Q. Give me them? A. "Attention," "lentement," "demi" and "toute."

Q. That is on the right side of the indicator. What is on the left side? A. The same.

Q. Do you remember any time when you say that you have seen Half Speed on the indicator when you can tell how many revolutions the engine was
2754 making at that time? A. No, I can't say that.

Q. You have said that you sometimes saw the indicator at less than Half Speed. Is there any order below Half Speed except Stop? A. Yes, certainly.

Q. What is it? A. Slowly; and if I remember right, there are two: "attention," that is what we call stand-by in English, and Slowly; and then Half Speed. That is as I remember it.

Q. And where is the Stop? A. The Stop is the first. Stop, then "attention," then "lentement" and then "demi."

Q. Can you tell at any time when you say you 2755
have seen the indicator stand at less than Half Speed when you can say how many revolutions the engine was making? A. I could not.

Q. Then, as I understand it, you never made any comparison really between the order of the indicator and the number of revolutions? A. Not that I could swear to definitely.

Q. Did I understand you to say that you remember to have seen any boat drills except these three emergencies? A. Those are the only three that I remember.

Q. What were the emergencies in those cases? One was a man jumped overboard, and what were 2756
the others? A. Two were people overboard and the other was a boat in distress.

Q. You said that you had noticed the difference in the length of the runs. Are you able to give us any figures of such differences? A. I couldn't give figures; no.

Q. Are you able to remember any occasion of a fog that you can testify to when there was a less run than there was on a clear day? A. It has happened certainly, several times, but I couldn't specify any particular trip.

Q. What makes you say then if you can't specify that it has happened several times? A. Because I 2757
have crossed so often I don't take notice of cases that are common occurrences. I don't take any more notice of them.

Q. You don't take notice whether the difference in run is occasioned by fog or heavy weather or anything else? A. I don't bother about the runs. I have given up taking so much notice of them.

Q. You also said that you had noticed a lateness of arrival, delays of arrival sometimes; can you give us any specifications of them? A. I have cer-

2758 tainly—we have anchored outside of Sandy Hook twice over night.

Q. When was that? A. The last time was about seven years ago.

Q. Can you give us any other occasions than those where you had to anchor off Sandy Hook by reason of fog? Can you give any other cases of lateness of arrival on account of fog? A. I can't specify the trips; I certainly couldn't say when.

Q. Could you say that your memory would serve you to say whether any delays were caused by fog or by heavy weather? A. Undoubtedly both contributed.

2759 Q. You can't specify as between them at all? A. No, I haven't the dates; I couldn't say from one trip to another.

REDIRECT-EXAMINATION BY MR. JONES:

Q. You said in answer to a question by counsel on the other side that you couldn't remember definitely the reductions of revolutions in cases of fog. Now, without being definite, give me your general impression of the extent of those reductions? A. I should say—no, I can't be exactly sure—but I should say ten or twelve revolutions.

Q. Is your ear such that you could tell without
2760 counting the revolutions any sensible reduction in the speed of the engine? A. Yes, sir.

Q. Now, relying upon such memory as you have, state whether or not your appreciation of the reduction of revolutions in cases of fog corresponded with the indicator which you have spoken of? A. I certainly think it did.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You said that your impression was that the reduction would be ten to twelve revolutions, as I

understand; about that? A. That is my impres- 2761
sion exactly.

Q. And they would be about that, whether the indicator stood at Slow or Half Speed, the same? A. I should imagine—no, Half Speed that would be, I should say, as far as my memory serves me.

Q. You should say that if the indicator stood at Half Speed that would correspond with a diminution of about ten or twelve revolutions? A. Yes.

Counsel for the petitioner objects to the answer of this witness as having been formulated in the language of counsel on the other side.

CHARLES G. WEST, being duly sworn and exam- 2762
ined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. You reside in New York? A. I reside at Greenwich, Conn.

Q. You were formerly the superintendent of the Compagnie Generale Transatlantique in this city, were you not? A. Yes, sir.

Q. You are not now in the service of the company? A. No.

Q. How long have you been out of the company's service? A. Since 1897.

Q. Were you familiar with the structure and ar- 2763
rangements of the lifeboats of *La Bourgogne?* A. Yes, sir.

Q. Just describe in your own way how they were arranged, giving the number of them as you recollect them; and by arranged I mean the appliances for lowering and the method of attaching them to the deck? A. There were twelve lifeboats or twelve boats all together, and four rafts. The whaleboat was arranged different from the others in that it had a patent davit, a patent appliance

2764 which allowed it to be swung outboard and lowered, as it was a very light boat, very quickly. The other boats were fastened and supported by davits, as is the general custom. These boats rested on chocks, which are composed of three pieces of wood, one forming the foundation that the boat rested on, and the two side chocks were conforming to the model of the bottom of the boat, and they were so arranged that they could be removed by unhooking from the one foundation piece which would lift the boat clear. The boats were hung to the davits by the ordinary boat tackles, and these boat tackles were what the sailors term "set taut," but not
2765 hauled taut. That is, the tackles were just tightened to hold a slight strain. The boats were fastened to the deck by means of a chain and a ring bolt in the deck, and this chain connected with a hook which went over the sides or the gunwales of the boat, and the hook was of a peculiar shape; that is, is worked on what might be called an eccentric. The moment the point of the hook came down through the ring to the chain it was lashed by a piece of cord, and when that cord was cut the hook would spread out, open up like a link, and detach the boat from the deck. Then the tackles were hauled upon these, lifting the boat free from the boat chocks and it would be swung one end, usually
2766 the forward end, inboard and the stern outboard, and then squared away straight with the line of the ship, that in preparation for lowering. These tackles were covered with a canvas to prevent the weather, snow and ice from forming and chocking up the tackles. The boats were also covered with tarpaulins, which were laced with cord to the sides of the gunwales of the boat. There were buttons about every six inches along the sides that these laces were looped over, and the moment that you cut the lace the boat cover went adrift.

Q. Were there any keys or locks or any per- 2767
manent fastenings so as to impede the ready releasing of the boats in lowering? A. No, sir.

Q. Or were wrenches or hammers required to lower the boats? A. No, sir.

Q. How was this tarpaulin covering the ropes arranged? Did it cover the ropes entirely or was it a mere hood? A. Well, it was what might be termed a sleeve or a hood, that came down, just folded over the tackles and the blocks to keep the weather out.

Q. The upper or lower blocks? A. The upper blocks; the lower block came down inside the boat cover, but the upper block, the one that was hooked 2768
on to the davit, that was the exposed one, as well as the ropes were exposed; consequently it would be covered down to the boat covers.

Q. A certain Mr. Cammeau has stated that one of the lifeboats of the *Bourgogne* couldn't be readily lowered because the ropes had got hardened and stiff by the paint on them, the ropes constituting the tackle. State whether or not those ropes were painted?

Objected to on the ground that the witness has no knowledge apparently of what the condition of things was at this time.

A. They were never painted to my knowledge. 2769
They were protected from that by the cover.

Q. How was this cover removed? A. Laced, lacing on each side with twine through eyelets in the canvas.

Q. Were these canvas covers painted? A. Yes, sir.

Q. State whether or not the crew of the *Bourgogne* and other vessels were drilled at the lifeboats when in port? A. Yes, sir; they were.

Q. How was that operation gone through? A.

2770 It was usually in the morning early so that the drills would not interfere with my longshoremen in working the cargo, and the men were called to their stations and the boats were uncovered and swung over the sides. I remember only upon one instance to having seen them put in the water. That was on the *Bourgogne* under the command of Captain LeBoeuf.

Q. In these other instances were they so swung out that they could be readily lowered into the water by just releasing the tackle? A. Oh, yes; they were swung out, but not lowered beyond the deck line, as we had coal barges alongside and they
2771 couldn't reach the water. That is on the inshore side, and very frequently on the off-shore side there would be barges and vessels in the way.

Q. Did you see the *Bourgogne* after she had been overhauled in the spring of 1898? A. Yes, sir.

Q. State whether or not the same arrangement of the lifeboats and their davits and tackle was continued? A. It was. I presume I might state in reference to that that previous to her laying up to be overhauled we had been notified that she required more life-saving appliances, and by direction of the company I was instructed to make such necessary arrangements with the United States
2772 Inspectors as would conform to the requirements——

Mr. Benedict moves to strike out the answer as incompetent.

A. (Continued.) And as we had no room on deck for more lifeboats, the four life rafts were purchased and put on board by me and accepted by the inspectors as covering the deficiency by the new regulations.

Mr. Benedict moves to strike out the part of the answer as to the acceptance of the inspectors as incompetent and immaterial.

Q. This, I understand you to say, you did your- 2773
self? A. Yes.

Q. You left the company in 1897, I understand? A. Yes, sir.

Q. And you were not therefore in her service when the *Bourgogne* was lost? A. No, sir.

Q. You in the meantime were in the habit of being on the dock, were you not? A. I frequently visited the dock and was at the *Bourgogne* when she left on this voyage. I had friends on board and went down to introduce them to Captain Deloncle.

Q. I understand you to say that you had seen these lifeboats after she had been overhauled, before the collision with the *Cromartyshire?* A. 2774
Yes, sir.

Q. And they were the same as you have just described? A. Yes.

Q. Did you know Captain Deloncle personally? A. Yes, sir; very well.

Q. What vessels of the company did he command, if you remember? A. He commanded the *Normandie* for a long time. That was his permanent vessel and had come on several voyages on the other ships; I don't remember which ones, but I know that he was here on several occasions before he permanently took a vessel of the line. He took the *Bourgogne* after I left the service.

Q. Do you know how he was regarded by the 2775
company as a navigator?

Objected to as incompetent and immaterial.

A. He was among his associates regarded as one of the cleverest of the navigators, it having been said of him that he came the closest to the theoretical number of miles of any of the navigators.

Q. What do you mean by the "theoretical number of miles"? A. Well, assuming that as a figure —I am not familiar with the exact fiugre—but that

2776 *2822 nautical miles was the exact distance between* Havre and New York, he had made the run in within two miles of that.

Q. Two miles in distance? A. Yes, of the theoretical number of miles.

Q. What was the usual day of arrival of *La Bourgogne* from Havre? A. From Havre? Well, Sunday morning.

Q. Was that also the case with the other three steamers of about the same construction, the *Champagne, Bretagne* and *Gascogne?* A. Well, generally; yes, sir; but the *Bretagne* and the *Bourgogne* usually made the time a little more regular.

2777 *pagne, Bretagne* and *Gascogne?*. A. Well, genyes; very frequently. I say very frequently—it was frequent.

Q. How much delay about? A. Anywhere from five to twelve hours.

Q. Did you ever know any of the steamers to come in on Monday? A. Oh, yes.

Q. Instead of Sunday morning? A. Yes, sir.

Q. Of course, you don't know the cause of delay except by hearsay, as you were not on board? A. That is all, sir.

CROSS-EXAMINATION BY MR. BENEDICT:

2778 Q. Are you in the employ of the company now? A. No, sir.

Q. You have attended the examination of these witnesses since they have been examined here in this office pretty continuously, have you not? A. Yes, sir.

Q. Have you been requested to attend? A. At the request of Mr. Jones; yes, sir.

Q. But you were not employed by the company? A. Not at all; no, sir.

Q. When did you say you went into the service

of the company as superintendent here? A. In 2779
1876.

Q. And remained as superintendent until 1897? A. Yes.

Q. Was there an official here of the company above you? A. Yes, sir; Mr. Forget, the agent.

Q. What had you to do as superintendent. Generally what were your duties? A. Well, from the time that the ship was sighted on her arrival until I got a despatch that she had crossed the Bar bound out there wasn't anything connected with the general handling of the freight, cargo or ship herself, transporting, removing her or repairs to the deck or machinery, but what came under me. 2780

Q. Was there a report kept of the arrivals and sailings of the vessels? A. Yes, sir.

Q. And is that report kept in the office as a regular part of the business of the office? A. It was when I was there.

Q. Up till 1897? A. Yes, sir.

Q. So that by that record you could tell just when the steamers of the line did arrive here during all the time? A. Yes, sir.

Q. And you also had, did you not, in the office the times of their sailings from Havre? A. Yes.

Q. And you also had the times of their arrival in Havre? A. Yes, sir; that is, I got them when the 2781
ship came back.

Q. But the records were always kept here? A. Yes, I kept them myself individually, for my own records; I left them there when I left.

Q. You turned them over to the company? A. Yes.

Q. Did you ever examine the cargoes of the steamers? A. No.

Q. That didn't come under your investigation at all? A. No.

Q. Was it the duty of the captain on their ar-

2782 rival here to make reports with reference to the voyage. A. I believe they—he made a report to the consul, but the verbal report was made at a conference that was held every Friday morning of the chiefs of all the departments and the captain of the ship. That was held at the agency.

Q. Was it the general duty of the captain to make a report of the occurrences of the voyage to the office? A. I never saw one. My office was on the wharf. I never saw what went on at the agency.

Q. But didn't you understand that there was always such a report made? A. No, no.

2783 Q. Have you ever followed the sea yourself? A. Well, I started when I was twelve years old and I went to sea until I was about—I think I made my last voyage as assistant purser when I was seventeen.

Q. Never been master of steamers? A. No, sir.

Q. When do you say those four life rafts were bought? A. They were bought and put on board either in the latter part of December of 1896 or in January, 1897. It was in the winter time; and, in fact, it was the last thing I remember doing for the *Bourgogne;* that is, an official duty of that kind.

Q. Up till that time then the *Bourgogne* had had only the twelve boats; is that correct? A. I think

2784 that is all. I won't be sure but what there might have been a raft, and as to whether I put three or four rafts on I am not perfectly positive; but I know there was more than one. I think there were three. There might possibly have been four, but I am not perfectly clear on that.

Q. At any rate, she didn't have as many as four rafts? A. No sir.

Q. And there was no change in the number of boats at the time when the rest were put on, as I understand it? A. No, sir.

Q. Do you say that Captain Deloncle was cap- 2785
tain of the *Normandie?* A. Yes, sir.

Q. When? A. He was captain of the *Normandie* when I left the company's service in 1897; he was captain of the *Normandie* in 1894. I think it was 1894 when she had her fire. She caught fire at sea and the fire was put out, and all that sort of thing.

Q. Do you remember the *Normandie's* having a collision a little ways off from this port while you were in the service? A. Yes, sir.

Q. Was Captain Deloncle captain of her at that time? A. I couldn't remember that. I remember the circumstances, but I don't remember who was 2786
captain of her then.

Q. Do you remember when Captain de Jousselin was captain of the *Bretagne?* A. Yes, sir.

Q. Where is Captain de Jousselin now? A. He is no longer in the company, I am told. I don't know where he is.

Q. There is a Captain de Jousselin connected with the management of the company. Is that the same man? A. That is the same man. He was made chief of the service in Paris. The service exportation.

Q. Do you remember ever being present at a boat drill in port? A. Yes, sir.

Q. Can you tell how long it would take to get the 2787
boats out? A. Yes, sir; I remember that very distinctly, and perhaps should tell the circumstances.

Q. Never mind about that. This is long enough as it is. A. That was on the *Bourgogne.*

Q. How long did it take to get the boats over, ready to drop in the water? A. Every boat was over the side in the water and manned in twenty minutes.

Q. But I understood you to say that here in port you didn't get the boats into the water? A. This

2788 was the only occasion when we did. I qualified my statement by saying there was one occasion.

Q. How many boats were put in the water then? A. Every boat she had.

Q. Do you remember how long ago that was? A. That was—I can't give you the year, but it was the year that the steamer *Riverdale* was burned on the North River; that is as near as I can get to it. I don't know what year it was, but it was at that time.

Q. Do you remember whether Captain Deloncle was in the service of the company in 1889-1890? A. I couldn't say, sir.

2789 Q. You spoke of a patent arrangement of lowering boats or something of that kind. Did that apply to both the whaleboats? A. I think it did. It did to the starboard whaleboat, anyway.

Q. What was the difference between that appliance and the appliances to the other boats? A. Because with that appliance the boat was lowered directly over the side and went clear about three or four feet, so that when she touched the water she was that much clear. These were arms that were built on the cantilever principle and lowered clear of the ship, and didn't swing out; they didn't have to be swung out.

Q. Was that a French patent? A. I really don't
2790 know; I never saw it anywhere else.

Q. Did you ever investigate at all to see what other appliances for lowering boats there were to be found? A. No, sir.

Q. You said that you were down on the *Bourgogne* the last start that she made from the port here? A. Yes.

Q. Had you been down on board of her the three or four times before that? A. No.

Q. She had only made four trips since she had been overhauled, consequently you can't have been

on board of her after she was overhauled, except the 2791
last time that she sailed? A. Yes.

Q. And then you went down to see friends off? A. Yes. I spent quite a little time with the officers and captain.

Q. You didn't make any examination of the boats then, did you? A. Oh, no; I simply saw that everything was in the position that it was when I had been there. If there had been any material change I would have noticed it.

Q. You might have noticed it or not? A. Oh, I didn't make any inspection.

Q. Just tell me what operations had to be done to get one of the lifeboats over into the water? A. 2792
I suppose to begin with there would be the necessary number of men; I don't know how many men were assigned to each boat, but I do know that on the occasion which I saw the boats lowered every man to, I think, the number of eight, not including the officer in charge, was at the boats. The covers were taken all off the boats.

Q. Tell the first thing they did and then the second thing and so on. A. The first thing was to take the covers off the boats, just cut the cord and unloose them. There were men on the outboard side and men on the inboard side that released the covers. The fore and aft piece that runs to support 2793
the cover to make it tent-shape was thrown off, the sleeves or hoods were taken off of the tackles and the lacings cut, and the hooks that held the boat to the deck, the lashings were cut and the hooks for the chocks were let go, and then all hands, dividing themselves equally between the tackles, lifted the boat and she went free of the chocks, and then she was launched ahead so that one end would be inboard and the other end would be shifted out and lowered, and the men slid down the tackles one after the other, and when the last man was in she was unhooked and the oars were lifted.

2794 REDIRECT-EXAMINATION BY MR. JONES:

Q. You speak of the memorandum book that you kept of the arrivals of the steamers and of their departures from Havre. Was that a book that you were required to keep for the company? A. No, sir.

Q. For what purpose did you keep it? A. I kept it for my own satisfaction, that was all; to keep a record.

Q. For what use was it; any? A. No use excepting to refer to if I wanted it for any purpose; that was all.

Q. Did you at any time communicate the con-
2795 tents of that book to the company? A. No.

Q. Do you know whether the present superintendent keeps a similar book? A. I do not; I kept a logbook of everything that occurred on the dock; entries were made every two hours. I don't suppose any one else would go to that trouble. I simply left those for my successor. There was no provision in the company that that should be done. I simply did it for a precaution for myself; that was all.

Q. State whether or not, whilst you were in the service of the company or afterwards, if you know, there was ever any question raised as to the proper
2796 nature of the appliances for the lowering of lifeboats? A. I never heard of it.

Q. Do you know yourself of any approved appliances in general use that are superior to those of the *Bourgogne?* A. No, I do not.

Q. You are familiar with the steamers of other lines, more or less? A. Generally; yes, sir.

Q. You know whether other steamers had any different appliances for lowering lifeboats than the *Bourgogne?* A. All the same that I ever saw with the exception that the *Bourgogne* had the cantilever

system that I don't find anywhere else. That was for her whaleboat. 2797

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. You spoke of remembering the collision that the *Normandie* had off port here. Do you remember the collision that the *Touraine* had with the bark *Sully?* A. I remember hearing of it.

Q. How did you hear of it, do you know? A. I heard that there had been a collision, but I don't remember how I heard. There was no report made to me about it.

Q. Did you also hear of the collision between the *Bretagne* and a sailing vessel, a Norwegian vessel, I think? A. No. 2798

Mr. Benedict: The time expiring to-day, Mr. Jones, are we to understand that your testimony is closed?

Mr. Jones: No; it will be closed as soon as I can get all my witnesses and not before, if I can help it.

Adjourned subject to further notice.

NEW YORK, December 24, 1901.

Met pursuant to notice. 2799

Present—Mr. JONES, Messrs. BENEDICT & BENEDICT, Mr. MURRAY, and Mr. STETSON, the interpreter.

Sauveur Santelli, a witness heretofore called in behalf of the claimants and sworn in this action, is now produced for examination, the petitioner's counsel having stipulated to produce him after the decision of the Court as to certain objections to his testimony. (Page 307.)

2800 Claimant's counsel asks counsel for petitioner whether he produces the witness for examination under the original subpœna.

Petitioner's counsel states that he has made the statement that he produces the witness under the conditions above indicated.

Claimant's counsel inquires whether the witness is produced in pursuance of the stipulation given to produce him.

Petitioner's counsel answers yes.

SAUVEUR SANTELLI, being produced, as above stated, in behalf of the claimants, testifies, through
2801 the interpreter:

By Mr. Benedict:

Q. When did you arrive in New York? A. Saturday.

Q. Are you still in the employ of the Compagnie Generale Transatlantique? A. Yes.

Q. How long have you been in that employ? A. One year.

Q. Before that year what employ were you in? A. I was captain in that company.

Q. In what capacity are you now employed? A. Inspector, controller.

2802 Q. Are your headquarters at Havre? A. Yes.

Q. Do you remember when your examination was begun in August of the year 1900? A. Yes, I recollect that I was questioned.

Q. Do you remember that you appeared then in pursuance of a subpœna? A. Yes.

Q. Do you remember that that subpœna required you to produce some books, the log of the *Touraine* and the Service a bord? A. Yes.

Q. You did produce them, did you not, before the commissioner? A. I produced the logbook of the voyage upon which I was called to appear.

Q. At that time, by instruction of the counsel, 2803
you declined to exhibit it for inspection to me, did you not? A. I don't remember. Was I called once or twice? I don't recollect.

Q. Once. A. I don't recollect whether I brought the book or whether I refused to.

Q. You have said that you brought the book before the commissioner. The question was whether you did not refuse to produce it to me for my examination? A. I don't recollect. I know that I was asked whether I had the logbook and I said that I had the logbook of the present voyage. I don't remember whether I brought it there or not. I said that I had it, but I am not sure whether I 2804
brought it or not.

Q. Do you say that you do not remember that you refused to let me see it? A. You asked me—I don't recollect whether I brought it there or not.

Q. Have you brought that book here now? A. I have no books. I am retired as a navigator.

Q. You don't answer the question. Have you brought that book here? A. I wasn't aware that I came here to be interrogated as to that subject. I am an inspector now, and that is why I suppose I am here. I don't travel with that book in my pocket.

Q. Did you not understand before you left Havre 2805
that you were coming here to complete this examination which you had begun? A. The first news that I had was when I arrived here.

Q. Then you did not know when you left Havre that you were going to be examined in this matter? A. No, sir.

Q. What did you do with that log after that first examination? A. When I left our ship I left everything on board. I have got nothing more to do with it. That book don't belong to me.

Q. That doesn't answer my question. The ques-

2806 tion is what did become of that book? A. I left it in Havre in charge of the company.

Q. Have you made any effort to obtain that book since in order to produce it on this examination?

Objected to as immaterial and as involving subject-matter already excluded from the case.

A. I haven't occupied myself at all with anything which concerns this question. I am retired.

Q. Were you captain of the *Touraine* in the year 1894?

Objected to as immaterial.

A. Yes.

2807 Q. In the month of May, 1894, was there not a collision between the *Touraine*, of which you were captain, and the vessel called the *Sully of Fecamp?*

Objected to as immaterial.

A. Yes.

Q. Was there not in consequence of that collision a legal proceeding taken in France on behalf of Cordiez, the master of the *Sully*, against the Compagnie Generale Transatlantique and yourself to recover the damages for the loss of the *Sully?*

Objected to as immaterial and as calling for testimony respecting a written document not

2808 produced or in evidence.

A. Yes.

Q. Were you examined as a witness in that proceeding?

Same objection, that the record speaks for itself.

A. No, not as a witness.

Witness, addressing petitioner's counsel: If you wish me to make any special answer you must tell me so.

Petitioner's counsel to witness: Make your own answers; answer in your own way. 2809

A. (Continued) I do not understand that I was examined as a witness.

Q. Did you not make your statement in that case in reference to the facts of the collision?

Same objection.

A. Yes. A declaration of what?

Q. About the collision? A. To whom?

Q. To anybody? A. Before the Court? I don't understand the question.

Q. (Repeated.) A. I was questioned and I answered.

2810

Q. You knew afterwards, did you not, that a decision had been rendered against the company and yourself in favor of the captain of the *Sully?*

Objected to as immaterial and inadmissible, as calling for testimony of a written document not produced, proved and offered in evidence, and as involving an inquiry into a public record which speaks for itself and is therefore the best evidence.

A. Yes.

Q. Did you ever see or hear the judgment of the Court in that matter?

2811

Same objection.

A. Yes, I heard it read.

Q. Did you ever pay the damages that were awarded in that suit or any part of them.

Same objection.

A. I didn't occupy myself with the matter at all.

Q. You don't quite answer the question. The question is whether you ever paid it or any part of it? A. Myself; no.

2812 Q. I show you a copy of the judgment entered in that case, which is marked Respondent's Exhibit A for Identification, October 10, 1901, and ask you if you remember to have heard that read. If you say you heard the judgment read I ask whether that is what you heard read?

Objected to as immaterial and inadmissible, and furthermore because this document and line of examination have already been excluded by the Court.

A. I heard a judgment read when I was there; I don't know whether it was this one or not. I never
2813 read it. I don't know what it was.

Q. Will you read it and see whether you remember that that is what you heard read?

Same objection.

A. I don't care to read it.

Q. You decline to read it? A. I have nothing to read. I know I was condemned; I know very well.

Q. Do you refuse to read that paper in order that I may ask you some questions about it?

Petitioner's counsel states to the witness that in the present state of the record he has a perfect right to refuse to read that paper if he
2814 wishes to refuse.

A. I absolutely refuse to read it since you can't force me to do it; I refuse.

Q. Had you before this trial made a report to the company of the circumstances of that collision?

Same objection.

A. Yes.

Q. To whom was that report made?

Same objection.

A. The president of my company. 2815

Q. Did you ever have any conference with him in relation to the matter after the decision was rendered?

Objected to as immaterial, irrelevant and as involving subject-matter excluded by the Court.

A. No.

Q. Did you have any conference with any officer of the company in reference to the matter?

Same objection.

A. I don't understand what you mean. I don't understand what your idea is, what you want to 2816
get at.

Q. My question is whether you ever had any conversation with any officer of the company after that judgment was rendered?

Same objection.

A. I am searching through my brains to find out what this question means. I may have talked with somebody. I don't know what the question means. I may have talked with somebody; I have perhaps spoken of it the same as I have talked with 36,000 people that I have met about other matters.

Q. You have no recollection, then, of any special conversation with any of the officers of the com- 2817
pany?

Same objection.

A. Such matters are generally the subject of correspondence; they are not talked about.

Q. Have you had any correspondence with any officer of the company in relation to that matter?

Same objection.

A. The usual service of the company.

2818 Q. You don't answer my question. (Question repeated.)

Same objection, and furthermore that the witness has answered the question.

A. I don't recollect any such correspondence, but for all questions of service between myself and the company we employ correspondents.

Claimant's counsel asks the interpreter to read to the witness an extract from the decree beginning with the words, "Attendu que pour resister aux demandes formées contre," etc.

2819 Objected to on the same ground as before and petitioner's counsel instructs the witness that he need not read or answer any questions with respect to the contents of this paper if he chooses not to.

Q. Do you remember to have heard those facts stated in that extract? A. I decline to answer.

Q. Are the facts stated in that extract with reference to the *Touraine* correct or not?

Same objection, and further that the record speaks for itself and should be properly produced, proved and offered in evidence before the witness can be interrogated as to any part

2820 or parts of the same.

A. I decline to answer.

Q. Was it not the fact that at the time of the collision with the *Sully* the *Touraine* was going at a speed of sixteen and a half knots in a fog?

Objected to as immaterial, irrelevant and involving subject-matter excluded by the Court; and counsel for petitioner instructs the witness that he may or may not answer the question as he may deem proper.

A. I will not answer. 2821

Claimant's counsel objects to communications to the witness by counsel on the other side that he may refuse to answer, and asks the interpreter to notify the witness that he has no right to refuse to answer the questions put by claimant's counsel unless on the ground that he claims to incriminate himself.

Interpreter does so.

Witness asks whether he may make a statement.

Claimant's Counsel: No; answer my questions.

Petitioner's counsel advises the witness that he may make any statement that he pleases. 2822

Claimant's counsel states that he has no right to make any statement except to answer any questions that he may put to him, and tells the interpreter not to communicate the statement.

Petitioner's counsel, addressing witness: You may make any statement you please and you may make it now.

Claimant's Counsel: The witness cannot make any statement now; he must answer my questions, and may make his statement afterwards.

Petitioner's Counsel, addressing witness: You may make any statement you please and answer any question in your own way. 2823

Claimant's Counsel, addressing interpreter: Will you also read to witness from the place where you ended to the middle of the next page.

Objected to as immaterial and inadmissible and involving subject-matter excluded by the Court.

The interpreter reads extract from the decree, beginning "Que l'en droite au contraire,"

2824 etc., down to and including the words "au demandeur."

Q. Do you remember to have had knowledge of any of the things stated in that extract which you have just heard read?

Same objection.

A. I have heard that read, but I don't recollect anything about it. I don't recollect anything about those matters now.

Q. You have no recollection of your attention ever having been called to the rules laid down in that extract?

2825 Same objection.

A. No; I recollect I was condemned and that is all I recollect about it. If you wish to know anything about this judgment you can find all the documents that are a matter of record in Havre. They don't belong to me.

Q. You do remember, do you not, that you and the company were condemned in consequence of the excessive speed of the *Touraine* in a fog?

Same objection.

A. It is written in the judgment in Havre; you have only to ask for that; it is a matter that is written; anybody can see it.

2826 Q. You do not answer my question. My question is whether you do not remember that you and the company were condemned on that ground?

Same objection.

A. Yes, I recollect I was condemned; I don't know why. It is written in the judgment why I was condemned.

Q. Do you not remember now that the cause of your condemnation was the excessive speed of the *Touraine?*

Same objection.

A. I object to replying. 2827

Q. Do you refuse to reply? A. Have I a right to?

Petitioner's Counsel: Do as you please?

A. I will not reply. I object to the question.

Claimant's Counsel: This paper heretofore marked Respondent's Exhibit A for Identification, October 10, 1901, which has already been proved and offered in evidence, is now offered again. (Page .)

Petitioner's counsel objects to the paper as not having been proved and as being inadmissible, irrelevant and not pertinent to any issue in this case, and as having been already expressly excluded by the Court. 2828

Claimant's Counsel: The Judge did not finally exclude it, but said he would hear argument respecting it on the argument of the case, and the paper was marked for identification for that purpose.

Q. Have you not written articles for the press or for magazines on the subject of the proper speed of steamers in a fog in the ocean?

Objected to as immaterial and irrelevant.

A. No.

Q. Have you ever discussed the question of the proper speed of the steamers with the president or any other officer of the company? 2829

Same objection.

A. No; I execute the orders that I am given with regard to speed. I don't know that I have had any special conversation about it. There is no discussion; there are rules.

Q. Did you not, as representing the Compagnie Generale Transatlantique, attend at a conference or conferences of steamship lines in London among

949

2830 the representatives of different steamship lines with reference to the navigation of transatlantic steamers?

Objected to as immaterial and irrelevant.

A. Yes. The conference was not on the subject of speed; it was on the subject of lanes to be followed by the ship.

Q. How long before the *Bourgogne* was lost had you acted as captain of her?

Objected to as immaterial and irrelevant.

A. I made one voyage in command of her two
2831 voyages before she was lost.

Q. When you were captain of her was the vessel equipped with the United States pilot charts?

Same objection.

A. They are not required by the rules.

Q. My question was whether you had them? A. I don't recollect.

Q. Are you familiar with United States pilot charts?

Objected to as immaterial and irrelevant.

A. I know that they come on board. They are sent on board.

2832 Q. Are they sent on board all the steamers?

Same objection.

A. I don't know. I know that they came; sometimes I didn't even open them.

Q. Do you remember that at the London conference in 1898 it was agreed to certain tracts, but it was added that "the French lines cannot go north until October 15th owing to instructions of their government"; do you remember that that was part of the agreement?

Objected to as immaterial and irrelevant.

A. I object to replying to the question. All those 2833
things are matters of record and there is no necessity of my answering.

Q. I show you a copy of that agreement which purports to be signed by you as representing the Compagnie Generale Transatlantique. Please look at it and see whether you remember that that is a copy of the agreement that was made among those lines?

Objected to as immaterial and irrelevant and not proved to be a copy of the paper referred to.

A. From the moment that it is written it is writ- 2834
ten. I have nothing to add to it as already written. It is written; I have nothing to change in it.

Q. That doesn't answer the question at all. Do you remember that that is a copy of the agreement that was made among those lines? A. Vaguely.

Q. Look at it. (Witness examines paper.) A. It is probable that if it is written down it is exact.

Claimant's Counsel, addressing interpreter: I ask you to read that and ask the witness whether he remembers that as being a copy of the agreement that was made.

Same objection.
Interpreter does as requested. 2835
Witness examines paper.

A. I think it is; I believe it is.

Q. You note that after your signature is added the words "except that northern track will commence October 15th"; do you remember how it came that you added that to your signature?

Objected to as immaterial, inadmissible and involving subject-matter occurring subsequent to the collision in this case.

2836 A. No, I don't recollect about those matters. I am no longer navigating and I am not bothering myself with them. I don't occupy myself with those questions.

Q. Do you remember as a fact whether you did have instructions from the French government in relation to the north track?

Same objection.

A. If I had any such instructions they must be written somewhere; they can be found. I don't recollect about dates in these cases.

Q. You don't answer my question. (Question
2837 repeated.)

Same objection.

A. I don't recollect.

Q. Don't you remember that you stated to the conference that you added that which is added to your signature because of instructions from the French government?

Same objection.

A. I have had no instructions from the French government.

Q. Did you have any instructions from the company?

2838

Same objection.

A. I had no instructions from the company. I had notice that I should go to this conference as a member and I went there.

Q. Why did you add those words to your signature if you had no instructions?

Same objection.

A. Probably at that moment that was my idea; I don't recollect.

Q. Before that conference had there not been an 2839
agreement with reference to the transatlantic routes among the various lines of ocean steamers.

Same objection.

A. No, it was a custom, but not an agreement. There was a usage, but not an agreement.

Q. Was there a usage among the steamers of the Compagnie Generale Transatlantique as well as the other lines?

Same objection.

A. There was nothing obligatory in it.

Q. You have said that that was the usage of the 2840
lines; was that the usage of the French lines?

Same objection.

A. Each captain did as he liked about it. Some of them did; it wasn't obligatory.

Q. You have said that it was a usage among the lines; what lines was it a usage among?

Same objection.

A. I don't know what the usage of the other lines was, but I know that there were captains that followed a certain route there; each one followed his fantasy according to the appearance of the weather.

Q. I show you Respondent's Exhibit A-9 of Octo- 2841
ber 11, 1901, being the United States pilot chart of December, 1891, and ask you whether you are familiar with that chart?

Objected to as immaterial and irrelevant.

A. I think I have seen it.

Q. I now show you another one, Respondent's Exhibit A-8 of October 11, 1901, and ask you whether you are familiar with that chart, being United States pilot chart of January, 1892?

Same objection.

2842 A. I don't remember whether I saw that chart ten years ago or not.

Q. You don't remember whether you ever did see it?

Same objection.

A. I can't recollect whether I saw a chart ten years ago or not.

Q. The question is not whether you saw it ten years ago, but whether you are familiar with it?

Same objection, and further that the witness has already answered the question.

2843 A. Yes, I have seen such charts as this.

Q. Were those charts like that that were part of the equipment of the ships?

Same objection.

A. No, they are charts that are sent to us gratis.

Q. You have seen them on board the ships, have you not?

Same objection.

A. Yes, I have seen them; they might come and they might not come. They are not things that we are obliged to have on board.

Q. The question is whether they do have them
2844 on board. Just look at these charts from January to July, 1898, and see if you are familiar with those or similar pilot charts?

Same objection.

A. As these are not charts that are required to be kept on board the ship, they may have been on board and they may not have been on board.

Q. Can you say that you have never seen them?

Same objection.

A. Yes, I have seen them.

Q. Do we understand you to say that as matter 2845
of fact the steamers of the French Line did not have on board the pilot charts of the United States, being these charts?

Same objection.

A. I don't say that they didn't have them. I say that not being required by the rules, they might have been on board or they might not have been on board. I have novels on board and other books. These charts have no importance because they are not required by the rules.

Q. By what rules do you mean?

2846

Same objection.

A. I am obliged by the underwriters and others to have charts to go in and out of port and for other matters, but these don't figure among the things that are required. They are absolutely useless.

CROSS-EXAMINED BY MR. JONES:

Q. I show you a paper purporting to be addressed by the Compagnie Generale Transatlantique to the agent at Havre, dated Paris, 19 December, 1884, and ask you if you have ever seen that? A. My signature is on it.

Q. State what it is. 2847

Objected to, that the paper will show for itself what it is, the paper is the best evidence.

A. Instructions of the company.

Q. Do you recognize the signature of the president and vice-president there as being true signatures? A. Yes.

Q. What are the names on the paper? A. The president's and the vice-president's, Franguel of the *Normandie*, Traub, Jousselin. I can't read the others.

2848 Q. Are the names you mention the commanders of the company's ships then in commision. A. Yes; I was in charge of the *Amerique;* Traub must have been in command of the *St. Germain,* and Jousselin, I don't remember about him.

The paper is offered in evidence and marked Petitioner's Exhibit 30 for Identification of this date. (Page .)

Q. How long were you in the service of the Compagnie Generale Transatlantique altogether? A. Twenty-three years.

Q. Prior to your commanding ships of the Com-
2849 pagnie Generale Transatlantique, what was your occupation? A. I commanded war ships.

Q. In the French navy? A. Yes.

Q. You were educated for the French navy? A. Yes.

Q. When did your term of service as commander of the French line ships end? A. A year ago.

Q. Can you recall what ships you have commanded of that line? A. Yes; the *Ville de Paris,* the *Feriere,* the *St. Laurent* and the *Amerique, La Gascogne, La Touraine* and the *Bourgogne* for one voyage.

Q. The *Gascogne* and the *Bourgogne* were ex-
2850 actly alike, were they not? A. Yes, sister ships.

Q. What discipline did you observe on board the *Gascogne* and on the one voyage that you commanded the *Bourgogne* with respect to the exercising or drilling the crew in lowering the lifeboats? A. The drills were made regularly, the same as every voyage, during the voyage upon which I commanded her.

Q. What did those drills consist of? A. Unless time is lacking when we are in the port of Havre the boats are generally put into the water and at sea the boats are swung out and swung back again.

Q. It has been said by a witness for the claim- 2851
ants in this case that a key was necessary to unlock some lock that fastened the boats. Please state whether or not the boats were locked or chained or fastened in any way?

Claimant's Counsel: Counsel has misunderstood the evidence. There is no such evidence in the case.

A. No, the boats are attached in the customary manner and the drills were always gone through with very quickly.

Q. Just describe in your own way how the lifeboats were swung out and lowered into the water? A. I should have to have a boat here to show you. 2852

Q. Just describe it in your own way? A. Well, you raise the boats slightly on their chocks. The davits are turned and the boats turn with them, and they are swung out as is done on board every ship.

Q. One of the witnesses for the claimants in this case states that there was great difficulty in lowering some lifeboat of the *Bourgogne* after this disaster owing to the fact that the tackle was clogged with paint. Please state whether or not the ropes or tackle holding the lifeboats were ever painted, to your knowledge, on any of the ships of the company? A. That isn't true. Those parts of the 2853
boats work entirely— well, you have only got to go on board and see them. There is no paint put on the tackle.

Q. What parts of a lifeboat are painted? A. The lifeboat itself and the pulley blocks.

Q. And the canvas? A. Not usually.

Q. State whether or not the instructions contained in this paper which I have shown you, marked Petitioner's Exhibit 30 for identification,

2854 December 24, 1901, were continued throughout your service as captain of the company?

Objected to on the ground that the paper is not in evidence and that in order to ask the witness about it it must be offered in evidence.

Petitioner's counsel offers the paper referred to in evidence and repeats the question.

Objected to as not sufficiently proved, and as immaterial and incompetent generally.

The paper is marked "Received in evidence."

A. This would have been renewed. The com-
2855 pany frequently gives those orders. I can't give you the precise dates.

Q. How was the *Bourgogne* fitted with the lifeboats and apparatus for lowering them and life rafts and other life-saving appliances with reference to the modern approved methods of appliances for those purposes at the time that she was lost?

Objected to as incompetent and incomprehensible, as it does not describe what the modern measures referred to are.

A. We had an inspection every year and every-
thing was all right according to the American
2856 Board of Inspectors, and we had sufficient lifeboats as were necessary to hold as many people as might be on board.

Q. That is not exactly my question. I asked you about those methods and appliances with reference to those that were generally accepted as proper for those purposes at the time that she was lost?

Objected to as immaterial.

A. We had on board that ship the latest systems in use at that date.

Q. Have you ever been connected with any con-

cern or Board of Inquiry with reference to im- 2857
proved modes of life-saving in case of disaster? A. Yes.

Q. When? A. In regard to the Anthony Pollock prize at Havre.

Q. What were those experiments; state generally what they were? A. To answer your question as you put it in a general way, this commission found that there was nothing yet invented absolutely practicable for saving life at sea, and no prizes were distributed. The only exhibition which was mentioned was a raft which could be got overboard on either side of the ship, according to how the ship was listed. That was the only thing that had a 2858
mention.

Q. It has been stated here that it is and has been the habit of the commanders of the ships of the Compagnie Generale Transatlantique to run at full speed in a fog at sea. State whether that is a fact or not?

Same objection.

A. No; if there are those who have done so I do not know it, but I can say this, that it isn't a general habit.

Q. What is the greatest length of time that you can recall going over your experience of a dense fog 2859
of such a nature as to oblige the ship that you commanded to materially reduce her speed? A. It can be said that it is very rare, very rare, that in any fog, however dense, there isn't a lighting-up at least once in ten hours, a lighting-up which don't last very long. We never have the whistle blowing two days altogether without stopping an instant.

Q. In a voyage where you encounter fog day in and day out is the fog, according to your experience, continuous or does it lighten up? A. No, no, never; no such fog exists; we may have two or three

2860 days of thick fog, but we always have a lighting-up from time to time.

Q. These intervals of lighting-up enable you to resume your full speed, I understand you? A. Yes, to permit the changing of the speed of the engines.

Q. You have been asked some questions about the lanes, routes, that have been established recently by agreement of the companies. What in your opinion is the general effect of the observation or following of those routes? A. It hardly belongs to me to give an opinion on that, but on one hand, while these lanes would tend to enable vessels to obtain assistance in case of accident, on the other
2861 hand—I prefer to withdraw my opinion; that is a question that will be discussed to the end of the world.

Q. Give your own idea about it, even if it be a debatable subject? A. According to the arrangements there, if one ship follows the other there is supposed to be less chance that they come in collision with each other; and on the other hand, if you meet with damage you are liable to fall in with other ships coming along the same road. It is a subject difficult of discussion.

Q. Is it your opinion that the new lane routes tend to diminish the chances of collision? A. No,
2862 because those lanes are only followed in places where there is no chance of a collision, and when the ships get in places where the real danger from collision exists, there are no rules governing those places.

Q. What was the general object of the adoption of those lane routes? A. First they were created on account of icebergs, and then in order that vessels might meet each other in case one met with a disaster, and that going and coming and in following these lanes they wouldn't meet each other coming together from opposite directions.

REDIRECT-EXAMINATION BY MR. BENEDICT: 2863

Q. Do you know how many lifeboats the *Bourgogne had?* A. I don't recollect exactly. I think she must have had either twelve or fourteen and besides that the life-rafts.

Q. Do you know how many passengers those boats were allowed to carry according to the rules of the United States law? A. All that is written on the boats; each boat has inscribed on it the number of passengers that are supposed to be carried by it.

Q. Now answer my question. (Question repeated.) A. No, I don't recollect.

Q. Then you have no knowledge as to whether the lifeboats on her were enough for the people on 2864
board? A. Yes, I know, because the laws of the United States require that she shall have boats to contain as many passengers as she has on board.

Q. That may be the law, but you don't know whether that was complied with; whether you know how many people the boats that she had could carry? A. Certainly, surely.

Q. How do you know that? A. Because every year you have an annual inspection made by the government of the United States, and if we didn't have enough lifeboats as required, the United States government would have made us get more.

Q. Do you know how many persons the lifeboats 2865
that she actually had could carry? A. No, I haven't got that in my head.

Q. Do you know how many persons the law of the United States required that she should have boats to carry on this voyage? A. It is very simple——

Q. Do you know; yes or no? A. Yes, I know.

Q. How many persons did the laws of the United States require that she should have boat capacity for on this voyage? A. The crew, the captain, passengers and steerage passengers are all added together, and the total of these shows all that can be

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2866 taken in the boats. I mean to say that there are places in the boats for all the persons existing on board.

Q. Do you know how many persons there were on board of the *Bourgogne?* A. No.

Q. Do you pretend to say that you know how many persons the boats that the *Bourgogne* had could lawfully carry? A. Yes, I mean to say that the boats would have contained the utmost number of persons that could have been on board.

Q. How many persons do you know that those boats could carry? A. I don't recollect the number.

2867 Q. Then you don't know anything about whether there were enough? A. Yes, I know that the ship can't go out of the port of New York; the Custom House wouldn't allow it, unless she had sufficient boat capacity.

Claimant's Counsel: You are entirely mistaken. She didn't have; I tell you that as a fact.

Petitioner's Counsel: I tell you as a fact that she did.

The Witness: Then the American Government was wrong in allowing the ship to go and it isn't possible. You have only got to consult the inspectors of the government.

2868 Q. You say that if there are captains of the French Line that have run at full speed in a fog you don't know any? I understand you to say that; was that what you said? A. Yes, that is what I said; I didn't know of any.

Q. But you yourself ran at full speed in a fog, did you not, and were convicted of the collision of the *Sully?* A. That has not been proven.

Q. Do you say you did not? A. If I had meant that I myself went at full speed in a fog that doesn't prove that any other captain has done so.

If in a corporation there is one criminal, that 2869
doesn't prove that all the others are criminal.

Q. Do you admit that you ran at full speed in a fog in that case? A. I have got nothing to admit; the judgment is written; you can read it.

Q. Do you deny that you ran at full speed in that fog? A. I will not answer that question.

Q. Did you ever hear of the collision between the *Bretagne* and the Norwegian boat *Tellus?*

Objected to as immaterial and irrelevant.

A. It is very vague in my mind.

Q. Don't you know that in that case the company was also condemned because the *Bretagne* ran at 2870
too great speed in a fog? A. I don't recollect.

Q. Did you never hear of the case in which the *Normandie* was condemned in our court here because she ran at too great speed in a fog?

Objected to as irrelevant and inadmissible.

A. No.

Q. You have no knowledge on those matters except with reference to yourself, have you? Your knowledge, I am speaking of, of the matter of the captains running at full speed in a fog? A. I can only say what I do; I don't know what the others do.

Q. Have you not repeatedly in a fog run your 2871
vessel as rapidly as you were running the *Touraine* when she had the collision with the *Sully?* A. I don't understand the question.

Q. (Repeated.) A. I can't go over again the trial of the *Sully.* If it has been shown even that once I didn't execute the rule, that don't prove that I have broken it again. I might have gone too fast and at all other times I might have followed the rules.

Q. (Repeated.) A. No, I don't think I did, because it was my duty not to do it, and I think I

2872 didn't do it. I did it once and I was condemned and that was the end of that.

Q. You have no memory on any particular case of fog, have you? A. No; I have seen so many that I have forgotten them all.

Q. Now, the log of your vessel would show, would it not, what times of fog you had; the logs which you kept while you were master of the vessels? A. What would show is written down there.

Q. Isn't it the duty to enter in the log of the ship he times of fogs, and do you not enter it? A. I don't know. The logbook is kept by an officer and what he sees he writes down there.

2873 Q. Don't you sign it yourself as correct, as master? A. Yes.

Q. Is it not according to the regulations that the log shall show what times of fog the vessel has on the voyage? A. The logbook should make mention of all the events which have taken place during the watch.

Q. Including fog? A. All the events.

Q. Including fog? A. All the events.

Q. Including fog? A. Yes, including fog.

Q. Is it not a regulation also that the log shall show what distance is run in every day? A. Evidently.

2874 Q. Then if you had the logs of your vessels present you could tell absolutely at what rate of speed your vessels were run in a fog, could you not? A. No.

Q. Why not? A. That depends. I don't think so.

Q. Do you mean to tell us that with the log of your ship before you you cannot tell how far your ship has run in a day of fog? A. No. I object to that question. I don't understand that.

Q. If you don't understand the question I will

repeat the question. (Question repeated.) A. I 2875
object to answer it.

Q. Do you refuse to answer that question? A. Yes, perfectly.

Mr. Jones: Answer the question.

Q. (Repeated.) A. If I see that it is written that the ship made 350 miles I know that she made 350 miles. If that is written down I know that she made 350 miles. I can't answer any more than that.

Q. You still don't answer my question. My question is whether if the log of your ship is before you you cannot tell the distance that the vessel has 2876
run during a time of fog? A. No, I could not, because the fog lighting up from time to time and being more or less intermittent, the speed of the engine would be changed from time to time.

Q. Still, would not it appear what the speed was during the time of fog? A. No, the average is put down of what has been done.

Q. Without that log before you will you undertake now to tell us at what rate of speed the *Touraine*, for instance, was run at any time of fog? A. No.

Q. Or any other of the vessels that you have commanded, can you tell? A. The same thing; if I 2877
had the logbook I couldn't tell what the speed was.

Q. That isn't the question. The question is whether you can tell without it? A. No.

Q. Do you say that that is your signature on this paper, Petitioner's Exhibit 30? A. Yes.

Q. When did you write it? A. I suppose in 1884.

Q. You were captain in the company's employ in the year 1884? A. In the year 1884 I commanded *L'Amerique*.

Q. Had anybody else written their names in the margin when you wrote that? A. I don't know

2878 that at all. It is of no importance for that matter. I don't recollect.

Q. Do you recollect whether there was any signature in the margin of that paper when you signed it? A. I don't know. I haven't seen that for twelve years; how do you suppose I can recollect that?

Q. Then, of course, you have no knowledge whatever as to when those other signatures were affixed? A. How do you expect I am going to recollect a fact which occurred seventeen years ago, in 1884?

Q. You don't know; that is my question, whether you know or have any knowledge as to when any of
2879 those signatures were affixed? A. I don't recollect anything at all about it.

Q. Have you any recollection of what occurred when you affixed your signature there? A. I only repeat what I said before. I haven't seen that paper for seventeen years. I must have signed that paper when it was presented to me.

Q. Have you any memory of anything that occurred when you signed that paper? A. No, I haven't seen that paper since that time.

Q. Do you remember whether in December 1884, you were in Paris or Havre? A. I don't remember.

2880 Q. How did you come to sign your name at the bottom of the paper instead of at the top? A. Because it is very probable that this paper has been presented to the first and the second and the third and the fourth and so on before it came to me, and I signed in my turn.

Q. Are any of the names that are signed in the margin there names of captains who are now in the service of the company? A. Traub is dead; Jousselin is alive; Frangeul—there are none of them commanding now. There is one here that I

can't read. Perhaps he is; I don't know. I don't 2881
think there are any in command actually.

Q. You recognize some of these names as having been in command, I understand, at the same time? A. Yes, I recognize two or three of them. I recognize the signatures of Periere and Cloquemin and Jousselin and Frangeul also.

Q. Periere was the president, was he not. A. Yes.

Q. What was Kloquemin? A. Vice-president.

Q. They were neither of them captains in command? A. No. I know only Frangeul.

Q. How long since Frangeul ceased to be a captain in the command? A. In 1894. 2882

Q. You say Traub was a captain? A. Yes, of the *Champagne.*

Q. When did he die? A. He died about seven years ago now.

Q. Are there any other names of captains that you see here except Frangeul and Traub? A. Yes, sir; those are some of the small vessels that I am not acquainted with (indicating on exhibit).

Q. You say de Jousselin; is he a captain now? A. No, he is retired.

Q. How long since he was captain of the *Bretagne?* A. He left in—six or seven or eight years.

Q. Now what is he? A. He is retired. 2883

Q. Isn't he in the employ of the company? A. No, he is altogether retired.

Q. Are you sure about that? A. Oh, yes, sir; he is retired for four or five years.

Q. The company gives us his name as one of the officers; that is why I call your attention to it. A. No, he is retired for eight years from navigation and four years ago he retired from the land service.

Q. Was he in the service of the company in the year 1898? A. No, three or four years ago.

Q. Do you know who was the principal agent at

2884 Havre in the year 1884? A. There have been four there who have changed about. I can't tell you—Gallon.

Q. Is he attached to the company now? A. He died a good while ago.

Q. These names on the back of this paper are in two rows. What does the first row signify? A. I can't read them. (Examining paper.) Those are the names of the ships.

Q. Do you know whether the names in the second line are the names of the masters of the ship against which they are written? A. I don't know anything about it. I only know the name of Mr. Frangeul.

2885 I don't know all the captains of the company.

Q. Do you know that Frangeul was the captain of the *Normandie?* A. Yes.

Q. In 1884 and 1885? A. Yes, I suppose he was.

Q. Have you ever signed your name to any such paper as that more than once? A. Every time that a memorandum has been handed to me I have signed it.

Q. Has there been any such memorandum presented to you and have you signed it? A. I don't know.

The paper, being Petitioner's Exhibit 30 of this date, is as follows:

2886 "Compagnie Générale Transatlantique
5, Rue Halévy

PARIS, le 19 December 1884

EXPLOITATION

Nota. Les reponses doivent être adressées au Président et porter en marge l'indication ci-dessus.

PARTICULIERE.
M B

vn. StLaurent
Fd deLesseps

M deJousselin
Brillouin

Traub

A. Chenais
A. Chenais

J. Prado
J.

Santelli

MONSIEUR L'AGENT PRINCIPAL
au Havre.

2887

Monsieur

Notre Conseil d'Administration s'étant vivement preoccupe des nombreux abordages qui se produisent journellement dans cette saison, dans les parages frequentes par nos paquebots, nous venons vous prier de rappeller à tous nos Capitaines individuellement les recommandations que nous leur avons toujours faites 2888
d'apporter dans leur navigation la plus grande prudence & de ne jamais hésiter dans certains cas douteux, d'adopter les mesures, même s'il en resultait une perte de temps, les plus propres à assurer la securité de leurs pajuebots.

Vous voudrez bien insister auprès d'eux pour qu'un temps de brumes, la surveillance la plus active soit exercée à leurs bords & pour quel toutes les prescrip- 2889
tions indiquées dans le réglement sur les abordages, soient, tant de jour que de nuit, strictement observees.

Agréez Monsieur, nos salutations empressées. Pour la Cie. Gle. Transatlantique
Le President Le VicePresident
EUG PEREIRE CLOQUEMIN

M. Lelievre

2890 *Canada* G. De Kersabiec
Labrador
O. Rodrigues Padel
St Simon
Normandie E. Grangeul
St Germain
Chatellier Guillaume

(Translation.)

Compagnie Generale
Transatlantique PARIS the 19th December 1884
5 rue Halevy

2891 Exploitation TO THE HEAD AGENT
In Havre.

Note. Answers should
be addressed to the President
and bear the above direction
in the margin.

SIR

SPECIAL

Our Board of Directors having seriously in mind the numerous collisions which daily occur at this season in the parts frequented by our Steamers, we come to beg you to recall to all our Captains individually, the recommendations which we have always made to them, to use the greatest prudence in their navigation, and to never hesitate in certain doubtful cases to adopt the most suitable measures to assure the safety of their steamers, even if a loss of time should result from so doing.

You will insist upon it with them that in times of fogs the most active watch be kept on

M B
seen:
St Laurent
Fd deLesseps
2892
M deJousselin
Brillouin
Traub
A Chenais
J. Prado
J

Santelli board their vessels and that all the prescriptions indicated in the rule as to collisions be strictly observed as well by day as by night. 2893

Receive, sir, our earnest salutations for La Cie Gle Transatlantique.

The President The Vice President
EUG. PEREIRE CLOQUEMIN

M Lelievre
Canada G. de Kersabiec
Labrador
O'Rodrigues Padel 2894
St Simon
Normandie E. Frangeul
St Germain
Chatellier Guillaume

RECROSS-EXAMINATION BY MR. JONES:

Q. Mr. Benedict has questioned you about the speed in a fog and if it was necessary to reduce speed in every instance of fog; is that so? A. No; that depends on the fog.

Q. What is the rule in regard to that? A. When you can see ahead of you at a certain distance you are allowed to go at full speed, according to the judgment of the master. 2895

Q. And he makes his observations from the bridge, does he? A. Yes.

Q. That is one of the purposes for which a bridge is constructed, I believe? A. Yes, up higher than the rest of the ship.

Q. Can this fact be determined from the deck? A. No; in cases of fog you want to be higher up so as not to have anything in front of your eyes so you can see what is going on; if you see anything

2890 alongside you can judge more or less of the intensity of the fog.

By Mr. Benedict:

Q. You say you see a certain distance; what distance do you mean? A. Each one appreciates that question as he understands it.

Q. What do you mean? How much would be a certain distance to you? You say when you can see a certain distance it is necessary to slow? A. That depends upon a great many things.

Q. You have said that if you could see a certain distance it would not be necessary to slow? A.
2897 If I said a certain distance I won't say anything else besides that. I can't say exactly what that is.

Q. Can you give us any idea of what you mean by that certain distance? A. It is a distance that I estimate at the moment. I don't want to give any figure which will not be exact.

Q. Can you give us within any limits of what you call a certain distance when you can go at full speed in a fog? A. If anybody could give the exact meaning of that they would make a law on it and then it would be settled.

Q. Can you give us any limits of vision with which you say that it was proper to go at full speed
2898 in a fog? A. No, it is impossible for me to give any.

Q. Would you go at full speed in a fog if you couldn't see a hundred feet? A. I don't know; I haven't navigated for a good while.

Q. Do you say you think it would be proper to go at full speed in a fog when you couldn't see a hundred feet? A. In the first place, people can't estimate exact distances in fog.

Q. That doesn't answer my question. (Question repeated.) When do you say that it is proper to

go at full speed in a fog? A. I have no opinion. 2899
That is a very personal matter.

By Mr. Jones:

Q. Hasn't this certain distance that you could see ahead in a fog something to do with your power to stop upon descrying an object? A. No; and I have said that that depends upon other things. I can't give the figures.

Q. Hasn't this certain distance that you could see ahead in a fog something to do with your ability to stop your ship or manœuvre in descrying an object? A. I said a certain distance was a thing that was approximate. I can't give exact figures. 2900

Q. (Repeated.) A. No, there are a great many things that I can't mention that would decide that question.

MARIUS POIROT recalled by the petitioners:

By Mr. Jones:

Q. You have already been called as a witness in this case? A. Several times.

Q. What steamer do you now command? A. *La Savoie.*

Q. Did you at any time command the *Bourgogne?* A. Yes, for one voyage only. 2901

Q. Do you recognize these as photographs of the *Bourgogne* (showing witness photographs)? A. Yes; but they are old ones.

Q. About how old are they, in your judgment? A. I don't know; there was a time when this ship had got four masts, at a certain time two of those masts were taken out, and therefore it must be an old photograph.

The photographs are offered in evidence, and marked respectively Petitioner's Ex. 32 and 33

2902 of this date. Photographs in original form accompanying the record.

Q. Do you remember how many lifeboats the *Bourgogne* had? A. No, I can't tell exactly.

Q. Describe generally the construction and arrangement of the lifeboats of the *Bourgogne?* A. The boats are placed on the deck and raised upon chocks; they are supported by tackles which are hooked; hooked on to davits; that is their position at sea.

Q. Just describe generally how the lifeboats are lowered in case of drilling, or in case of necessity? A. A whistle is blown, as is customary on all ships;
2903 which means that every one should go to his boat post. Immediately the men all run, each one to his boat; and in a few seconds the boat can be put into the water. It suffices to capsize the chocks, push the boat a little ahead, swing it out, and lower it away.

Q. Were there any lifeboat drills had on the *Bourgogne?* A. Yes, certainly.

Q. What did they consist of? A. In what I just said; that all the crew go up there and have the boat swung out, if we were at sea; and in the port of Havre they are lowered away into the water, and they are tried, under sail and with oars.

2904 Q. How about the port of New York? A. In the port of New York they are swung out; that is to say, I did it; because we have these coal barges underneath, which prevent lowering the boats into the water.

Q. Are you familiar with the instructions contained in this paper (showing witness petitioner's Exhibit 30 of this date)?

Claimants' counsel objects as incompetent.

A. Yes.

Q. Have you those instructions, or similar in-

structions on board your ship now? A. I have 2905
seen those instructions probably in the list of orders; and for that matter I remember that these instructions have been renewed several times.

Q. How long have you been in the service of the company? A. Eight years.

Q. It has been said in this case that it is the habit of the captains of the company to run their ships at full speed in a fog at sea. State what you know about that, if anything?

Objected to on the ground that the question should be confined to his own action.

A. I don't know anything about it; but I don't 2906
believe it.

Q. What has been your course of conduct with respect to that mode of navigation? A. I slow down always when there is fog.

Q. Do you sometimes have fog that doesn't require you to slow down? A. That depends on what you call fog; yes, there may be weather, what we call hazy weather, when there is no need of slowing down.

Q. What do you understand to be the rule as to the speed at which a steamship can be navigated in a fog? State generally, as if you were explaining it to me, without my having any knowledge of it? 2907

Objected to as immaterial.

A. We are to diminish our speed according to the intensity of the fog.

Q. State whether or not the diminution of speed has reference to your power to stop when you see an object?

Objected to as leading.

A. Yes; both as to stopping and as to steering.

Q. Have you ever had a collision? A. Yes; once in New York harbor.

2908 Q. Was it while you were in command of the *Bourgogne?* A. Yes.

Q. The court found that you went at a moderate speed on that occasion, did it not? A. Yes.

Q. And you were acquitted of all blame? A. Yes.

Q. In the District Court, the Court of Appeals, and the Supreme Court? A. Yes.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Have you ever seen that paper before to-day (showing witness Petitioner's Ex. 30 of this date)? A. I saw this one yesterday.

2909 Q. Have you ever seen it before yesterday? A. No, not this one, but a similar one.

Mr. Benedict moves to strike out all the answer after the first word, as not an answer to the question asked.

Q. Will you produce any other instructions that you have received? A. I haven't them.

Q. Have you any? A. No.

Q. Have you ever signed any instructions as that paper is signed? A. Not in the same way; I don't think so; but I am not sure.

Q. You say that you have been in the service of
2910 the company since about eight years? A. Yes, last September.

Q. The company has, in its answer, stated that it had given no other instructions to its masters in reference to its speed, except those contained in the Service a bord; do you say that you have received other instructions than those in reference to speed? A. No.

Q. Can you remember the details exactly with reference to any time when you have slowed the speed of your vessel in a fog, excepting the case of the collision with the *Ailsa?* A. No.

Q. If you had the logs of your voyages you would 2911
be able to tell, would you not? A. In a general way; but not in an itemized way. For that matter you have already asked me all those questions, and I recollect very well these questions have been asked me before.

Q. The collision that Mr. Jones asked you about was the collision with the *Ailsa,* was it not, in the harbor of New York? A. Yes.

Q. Have you not often seen as thick fogs on the ocean as there was in the case of the *Ailsa?* A. No.

Q. In the case of the *Ailsa* you were navigating the *Bourgogne* by stopping your engine occasionally, were you not, in order to make a slow speed? 2912
A. Yes; in order to go as slow as possible.

Q. The rate of speed of the *Bourgogne* in that case was about how much? A. I don't know; I can't say; there was a good deal of current.

Q. Did you then testify that it was about seven or eight knots? A. I don't recollect; at that time the matter was stronger in my memory.

Q. You remember the first time you were examined by me in the *Bourgogne* matters, do you not? A. You mean in this case?

Q. In the Deslions case? A. Yes; I remember that I was examined, but I don't remember just when it was.

2913

Q. Didn't you testify at that time that the lowest rate of speed for the *Bourgogne* to give her steerageway was eight or nine knots? A. It is possible; I don't recollect.

Q. If you did say so that was accurate, was it not? A. Yes; if I said that it was eight or nine knots that were necessary in order that she should steer, it astonished me, because I don't think I said that. I have said that with the engine of the *Bourgogne* moving all the time she must have been doing

2914 at not less than six or seven knots; I don't think I said that.

Q. I read you the questions and answers:

"Q. At what rate of speed would the *Bour-*
"*gogne* go, the lowest rate, to give her steer-
"ageway? A. That would depend upon the
"current.

"Q. Without the current? A. Eight or
"nine knots."

A. I think that is not too much; it is not necessary to have seven or eight.

Q. You think she would get steerageway at less
2915 than eight or nine knots? A. That is where the whole question as to whether she would steer well; in the word "well."

Q. The question is as to having steerageway. A. Well, seven or eight knots are not necessary in order to have steerageway.

Q. Can you give us more accurately how many knots she would have steerageway? A. No, because there are a great many things that intervene; the wind, for example, the difference in the ship's draft.

Q. You were asked in that case this question:

"Q. Acording to the rules of the com-
2916 "pany do the vessels keep a separate log for
"each separate voyage? A. Yes."

Q. Is that correct? A. Yes.

Q. Then you were asked:

"Q. Meaning by a voyage, from Havre to
"New York and back? A. The logbook
"covers the round trip from Havre to New
"York and back to Havre."

Is that correct? A. Yes.

Q. And you were asked whether each voyage

had a separate log, and you stated "those two trips 2917
"complete one voyage, and each voyage has a sep-
"arate log." Is that correct? A. Yes.

Q. You were asked:

"Q. What is done with the log at the end
"of the voyage? A. It is filed away in the
"archives, either in France or on board the
"ship during a certain time."

Is that correct? A. They are returned to the administration in Havre; filed.

Q. Is it not necessary that the captain of the vessel should know the speed that his vessel has made and the distance that she has made during 2918
each twenty-four hours? A. Yes, as much as it is possible to know it; it is not always possible to know it. We have to estimate it sometimes.

Q. But the entries in the engineer's log always will tell, will it not, how many turns of the screw have been made in a given time? A. Yes.

Q. And it is always requisite, is it not, to enter in the log the times of fog? A. Yes, but the time of fogs is very vague; that expression, "the time of fog," is a very vague one; there are fogs and fogs.

Adjourned to Thursday, December 26, at 2.30 P. M.

2919

NEW YORK, December 26, 1901.

Met pursuant to adjournment.

Present—Mr. JONES, Mr. BENEDICT, Mr. STETSON, the interpreter.

JOSEPH HELIN, being duly sworn and examined, through the interpreter, as a witness for the petitioners, testifies:

By Mr. Jones:

Q. Where do you reside? A. Severac, part of St. Nazaire.

2920 Q. What position did you occupy on the *Bourgogne?* A. Oiler.

Q. In the engine room? A. Yes.

Q. Were you on duty at the time of the collision? A. No, I was in bed.

Q. Were you asleep? A. I was drowsing.

Q. Do I understand by that that you were sound asleep? A. No; I had been up about half an hour before that.

Q. Did you hear the shock of the collision? A. Yes.

.Q I wish you would describe in your own way and just as fully as possible what you heard and
2921 what you saw and what you did from the time that you felt the shock of the collision or heard of the collision until you were subsequently rescued? A. I heard the shock of the collision when we were run into by the sailing vessel; I got up quickly, and I hurried through the engine room; the engine was stopped; I went out by the starboard door of the engine room, where our vessel had been run into; I perceived there a mass of iron on the deck. I went to the spot where it was, and I looked along the side of the ship on the outside, and I saw, along the side of the ship, the whole side which was broken in for a distance of some thirty meters, starting
2922 from opposite the captain's bridge, and going aft to opposite the engine room. Several boats had been carried away and the spar deck broken. From there I went back to my quarters; I finished dressing myself; I met the chief of my watch, who was Mr. Brissac, who told me to get our people, who were in their quarters, to the boats. I hurried then to rouse up the people and get them out, but as the firemen had already gone I went to my boat post, which was at whaleboat No. 4. When I got there I found that the sailors belonging to the ship had already swung her out; she was hanging from the

tackle. From there I went and stopped a little 2923
under the captain's bridge, from whence I heard the commandant, who said to the first-class passengers, who were all crowded together under the captain's bridge, and all had life-belts—the captain told them that they were about sixty miles from Sable Island, and they were going to beach the vessel there. I then went underneath the captain's bridge and found a life buoy; I went aft, where I noticed one of the boats which was hanging from the davits above the water, which had been taken possession of by foreign sailors, and I jumped overboard and tried to get into that boat, and I was pushed away by these sailors with an oar, and I 2924
came back and got hold of the rail of the ship, which was already sunk in the water. I then got hold of two long chairs which were on the after house; I threw them overboard, and with the intention of saving myself by means of them. I saw Mr. Laisné and Mr. Bourch and Mr. Deprez and some others, who were getting the raft overboard. I saw Mr. Deprez, who had started off already with one with a good many other people on board, they pushed off from the vessel. The third or fourth raft I was able to get hold of; I don't remember which one it was. It was a raft which had one whole side stove in. There were no oars on this raft, so that it could 2925
be rowed, and the raft drifted back under the quarter of the ship, so I broke one of the boards forming a part of it to use to row with. We got then away a little distance from the ship, which was at that time almost capsized—she was down on her beam; capsized; her funnel was lying down almost flat with the water in a horizontal position; and I then saw a boat which was along the side of the ship under one of the funnels. There were a great many first and second-class passengers and officers in it; the backstays of the chimney gave way, and it fell

2926 right on the boat and broke her in two, and smashed and killed the people that were in it; they all disappeared when the funnel came down, and a moment after the steamer stood almost up on one end, turned all over on one side, and she went down and disappeared, and we were about ten meters from her. A good many people came up to the surface and came around and we did the best we could in saving them and getting them on the raft. We got as far away from the ship as we could, and when she went down we tried to get away from the swell that she made and our raft was all sunk on one side, so that some of us were in the water above our knees.
2927 We stayed there quite a while and then asked for assistance from boat No. 9, which immediately came to our assistance. We remained in this boat No. 9 till about ten o'clock, or perhaps a little later than that. We were fifty-seven people. The fog lighted up little by little, and we saw a sailing vessel quite a distance off; and we rowed towards her and we succeeded in getting alongside, and we found there the whaleboat and our boat No. 11, which had had the foreign sailors in it, which had already arrived there before us. We remained quite a little while on board the sailing vessel, and in the afternoon at quite a distance off we heard
2928 the cries of people who were asking for help. We got together again and took boat No. 9 and left to go to their assistance. We rowed for an hour and a half or two hours before we were able to get up to where they were and pick them up. The first wreck that we came across was a boat full of water with eleven persons more dead than alive, and the second boat that we got to was capsized with her keel in the air, and on the keel were five persons. We picked them up. The third boat that we came to was also capsized, and there were six persons on her keel as well, and we took them off, and almost out

of sight in the distance we saw a raft which was 2929
loaded down with people; we rowed towards them and finally managed to reach them, and they gave us the end of a rope to tow the raft with. We towed this raft for more than an hour. Several times this towing line broke, and we were obliged to abandon them and go back a second time with another boat and save them. We were all pretty near exhausted by that time. We picked up twenty-one persons; we had put the first people on board the ship, and when we came back to the raft we got forty people, making some sixty-odd people in all that we saved. There were some 60 people altogether that we saved. We then went on board the sailing vessel and finally 2930
went to Halifax.

Q. What kind of a sound did the contact of the sailing vessel cause? A. There was a heavy shock at first, and then a sort of a rubbing noise.

Q. What is your idea of the cause of this rubbing noise? A. I think it was after the meeting of the two ships.

Q. Did you see the sailing vessel? A. No; I only felt the shock.

Q. Did you see her when you went on deck? A. No, she had disappeared.

Q. About how long was it after you were aroused that you reached the deck? A. Perhaps two sec- 2931
onds; just time for me to run there; immediately; I didn't dress myself; I ran right out.

Q. When did you first notice the list or incline of the ship? A. Right at once; after the collision; all the people came out from the between decks and all over, and they all went over on the side where the damage had occured; they all ran over there to look over the side of the ship to see the damage that had been done.

Q. To what lifeboat were you attached? A. To whaleboat No. 4, which was hanging from the davits. I couldn't get at her.

2932 Q. Were the boats on the same side as whaleboat No. 4 in such a position that they could be got out? A. No; they were all down on the side of the ship; they were down on the hull on the side of the ship; it was impossible to get them into the water.

Q. This was the port side? A. Yes.

Q. Why was it impossible to get them into the water? A. Because the side of the ship swelled out there, and instead of being able to drop them down outside they came down inside.

Q. What was this swelling out caused by? A. It was where the quarter of the ship was.

Q. What caused this swelling out and this in-
2933 ability to lower the lifeboats? A. It was the way she was built; the side of the ship was rounded out there a little.

Q. Do I understand you to say that this was the only difficulty in lowering the boats? A. Yes, the way the ship was capsized there, and the form of the ship; we couldn't get them out.

Q. Then the difficulty was on account of the list of the ship. Is that what you mean? A. Yes; it was impossible to get them out.

Q. Did you go on the bridge with the captain? A. No; I remained underneath it.

Q. Was there much excitement among the pas-
2934 sengers, or confusion? A. No, everybody was calm; there was no excitement; nothing.

Q. Did you notice whether any passengers were getting into the lifeboats? A. Yes, the emigrants came up and filled the boats.

Q. When you speak of passengers being calm you mean the first-class passengers? A. Yes, I mean the first-class passengers; they all had lifebelts and were calm.

Q. How about the second and third-class passengers; how did they appear? A. The third-class passengers were the emigrants; they took posses-

sion of the boats and filled them chuck full, and it 2935
was impossible to get the boats into the water. I didn't notice the second-class passengers so much. I noticed the mothers that were talking to their children.

Q. What orders, if any, did you hear the captain give? A. I heard him tell the officers, "The officers will tell the passengers that we are sixty miles from Sable Island, and we are going to make the land."

Q. Did you hear any fog horn from the sailing vessel before the collision? A. No, I didn't hear anything.

Q. Did you hear the siren or steam whistle of 2936
the *Bourgogne* before the collision? A. No, I couldn't certify to it; I can't say; but I know that I heard the telegraph going during the night.

CROSS-EXAMINED BY MR. BENEDICT:

Q. When did you hear the siren? A. I can't tell you the hour.

Q. You stated before that you had been awake half an hour before the collision; was that the time when you heard the siren? A. Yes, at that time the siren was going, and during the night it was going. The siren didn't stop blowing; it blew all night. I can't tell you the intervals between the 2937
blasts.

Q. What time did you go below? A. At ten o'clock in the evening; it was from six till ten.

Q. Do you say the siren was blowing during your watch? A. Yes, during the whole of my watch; and after my watch, during the night I heard it going.

Q. Can you give us any idea how fast you heard it blow after you turned in? A. No, I could not.

Q. But you say you did hear it several times? A. Yes.

2938 Q. And you heard it blowing the last time that you were awake before the collision? A. Yes, sir.

Q. How many times did you hear it blow when you were awake at that time? A. I can't say; I was drowsing and I know that it was blowing.

Q. On which side of the ship was whaleboat No. 4? A. The port side.

Q. And that, you say, had been swung out before you got there? A. Yes; as soon as the collision took place they swung that boat out.

Q. Did you see any other boats swung out on the port side? A. No; there were none.

Q. I understand you to say that the boats on the
2939 port side were down on the side of the ship. How could they be on the side of the ship of they hadn't been swung out? A. They were still attached to their davits there, but you couldn't push them out; every time we tried to push them out they came down on the ship; on the side.

Q. Do you mean to say that when you swung the boats out they came back against the side of the ship? A. Yes, they came back on the side of the ship.

Q. Before they can swing out do they rest down low enough to touch the side of the ship, are they not above the deck? A. They were still hanging
2940 from their davits and we couldn't get them out on account of the ventilators and other things.

Q. Had they been lifted off the chocks? A. No.

Q. None of the boats on the port side were lifted off the chocks? A. There may have been some, but I didn't see them.

Q. Which boats did you see on the port side? A. I saw the No. 2, No. 4 and No. 6. No. 2 was forward of our whale-boat and No. 6 was aft of it.

Q. And neither of them, except the whale-boat, had been lifted off the chocks? A. No. 2 was full of people, and it was still on its chocks and No. 4

was on its chocks as well. There were people in 2941
almost all the boats. The people that were in boat No. 2 when the ship lifted herself up on end, I have stated—they all fell aft.

It is stipulated between the parties that the pitch of the screw of the steamer *Bourgogne* was 10 meters, and the slip of the screw in ordinary fair weather was 10 per cent.

It is hereby stipulated and agreed that the following statement, before the French Consular Agency at Halifax, Nova Scotia, dated 6th of July, 1898, shall stand for and be considered as the testimony of the witness Denis, whose name is appended thereto; and further, 2942
that the said paper is a copy of the declaration of the other persons, whose names are appended thereto, made before the French Consul at the time indicated in the paper:

S. S. "La Bourgogne,"
French Consular Agency,
Halifax, N. S.

This day, the sixth of July, One thousand eight hundred and ninety-eight, before me, Geo. E. Francklyn, French Consular Agent at Halifax, N. S., personally appeared Messieurs Jean Petiot, quartermaster, the sailors Rene Deniz, Yves Le Bris, Yves Pierres, 2943
Pierre Valere, Fortune Le Breton and Desire Le Mayner, also the helmsman, Louis Corre, of the steamer *La Bourgogne* of Havre (the captain and all the other officers of the steamer having been drowned), who declared to me on oath:

We, the undersigned, who were on watch on board the *La Bourgogne* at the time when she was struck by the sailing vessel *Cromartyshire* on the 4th of July at ten minutes past 5 A. M., in a thick fog, testify that the siren of the *La Bourgogne* was sounded every minute. We heard the fog horn of the

2944 sailing vessel one minute before she struck us; she struck us on the starboard side with her jibboom forward of the davits of No. 1 boat, then she stove in the plate of the upper bridge and stove in No. 3 whaleboat abaft the upper bridge, her hull coming on and staving in our plates on the starboard side. The *La Bourgogne* took a list to starboard, rendering the port boats useless. All the officers were at their posts, the captain being on the upper bridge until the *La Bourgogne* foundered. No. 11 boat was seized by Austrian or Italian sailors, to the number of about a dozen, who refused to allow other
2945 persons to get into the boat, which would have carried from forty to fifty persons. No. 5 starboard boat was stove in by the collision. No. 7 starboard boat was stove in by the funnel when the steamer foundered.

(Signed) PETIOT, quartermaster, A. B.
CORRE, Helmsman, A. B.
VALERE, A. B.
LE MAYNER, A. B.
DENIS, A. B.
LE BRIS, A. B.
PIERRES, A. B.
LE (his mark) BRETON, A. B.

2946

Signed before me, French Consular Agent, at Halifax, N. S., after it had been read over, the deponents having sworn to speak the truth.

Halifax, N. S., July 6th 1898.

(Signed) GEO. E. FRANCKLYN.

Certified to be a true copy of the original deposition with the French Consular Agent at Halifax.

Halifax, N. S., 19th September, 1898.

(Signed) GEO. E. FRANCKLYN.

Adjourned to Friday, December 27, at 2.30 P. M.

NEW YORK, December 28, 1901. 2947

Same appearances as heretofore noted.

NATHAN METZ, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. What is your business? A. Importer.

Q. Where is your place of business? A. 621 Broadway.

Q. Do you reside in New York? A. I do.

Q. Have you ever travelled by the steamers of the Compagnie Generale Transatlantique? A. I 2948 have.

Q. Did you ever cross by *La Bourgogne?* A. Yes.

Q. Who commanded her at that time? A. Captain Deloncle.

Q. Do you remember when that was? A. I do.

Q. Just state the time please. A. It was on the 21st of May, 1898.

Q. Did you have any fog on that voyage? A. We did on several occasions; I recollect especially on one evening.

Q. Did you observe whether in those cases of fog the engines of the *Bourgogne* were slowed down? A. Yes; in one instance that I refer to I was sitting 2949 with another traveller, a Dr. Gerard, in the smoking room; the fog horn was going very, very hard and very loud, and the doctor said to me——

Q. Never mind what the doctor said. Just tell what occurred and what you saw and heard on the voyage? A. I noticed that we were going at a slow rate.

Q. How did you satisfy yourself of that fact? A. I am an old traveller at sea; I know very well, and I feel, you understand, when we are going fast

2950 or going slow, and this was especially the case in that instance; I could feel it. I expressed my opinion——

Mr. Benedict: Never mind about the expression of your opinion.

Q. Did you see anything of Captain Deloncle on that voyage? A. Very often.

Q. Did you observe whether he was attentive to his duties? A. More so than any other captain that I have seen on the French Line.

Q. How were you impressed with the general character of his seamanship, and as a commander?
2951 A. As far as I am able to judge I considered him to be a very, very good captain; a very good commander.

Q. He kept to his bridge during the fog? A. He did.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Was this trip a trip from Havre to New York, or from New York to Havre? A. From Havre to New York.

Q. What time did you arrive here in New York? A. On a Sunday morning.

Q. What time? A. I must say between eight
2952 and ten; I do not recollect the hour exactly.

Q. You mean by that that it was the time you got to the pier? A. Yes; it must have been about that time.

Q. Do you remember how long before that arrival this evening that you speak of was; was it the evening before? A. That evening of fog was at least three days previous; that foggy night; three days previous to our arrival.

Q. How long did the fog last, as far as you know, on that evening? A. It must have been about an hour; we must have been near the Banks, because

you know the fogs appear there very often; I will 2953
state yet if you will permit me——

Q. Never mind; answer my questions. Do you remember when you started from Havre? A. I am not so positive; I believe it was about ten o'clock in the morning.

Q. Of what day? A. I couldn't tell you.

Q. You can't remember the day? A. No; of course, I could look it up.

Q. Did you keep any memorandum of the runs of the ship, every day? A. No, I did not; I made bets on it.

Q. Did I understand you to say that you noticed fog on other occasions than this evening that you 2954
speak of? A. Oh, yes; short intervals.

Q. How long? A. These fogs never last——

Q. Never mind about that; how long did they last? A. Do you wish me to state how long these fogs lasted?

Q. That is my question. A. About half an hour.

Q. How many half hours of fog do you think there were besides this hour in the evening? A. Three or four.

Q. On this evening that you speak of were you in the smoking-room all the time? A. I was in the smoking-room for quite a while, yes; together with another passenger.

Q. All the time that fog lasted? A. As long as 2955
that fog lasted, yes.

EUGENE DE BOCANDE, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. You are the general agent for the Compagnie Generale Transatlantique? A. Yes.

Q. For the United States and Canada? A. Yes.

Q. And your general office is in this city? A. 32 Broadway.

2956 Q. The company has a branch office, I believe, in some other cities. Will you mention them? A. Chicago, Boston, St. Louis, New Orleans, San Francisco, Montreal, Philadelphia, nearly every big city.

Q. How long have you been the general agent of the company? A. Since November, 1897.

Q. You were the general agent when the disaster to the *Bourgogne* occurred? A. Yes.

Q. Were you present in New York at that time? A. No, I was in Paris.

Q. You were on your usual annual vacation? A. Yes.

2957 Q. How long have you been connected with the company? A. Since 1879.

Q. In what capacities have you been engaged? A. Clerk.

Q. Did you afterwards become assistant chief, and chief of the Bureau? A. After that I was inspector, and then assistant commercial manager, my father being the commercial manager; I succeeded him in 1894 when he died.

Q. Did you remain manager of the Commercial Department until you became general agent here? A. Yes.

Q. State whether or not you are generally familiar with all the branches of the service of the
2958 company, in their administration at Paris? A. I may say I am.

Q. Did the different branches come under your observation as assistant chief and chief of the commercial service? A. By every day's business I do work with all departments.

Q. Did you give any special or particular attention to the New York and Havre line? A. Always.

Q. When one of the ships of the company arrives state what is and has been the practice of the

commanders with respect to making reports of their 2959
voyages?

Objected to on the ground that this witness was in Paris during this time, and the ships didn't arrive at Paris.

Q. Beside your duties in Paris did your business extend to the supervision of the agent at Havre? A. When I was sent in inspection, yes.

Q. State whether or not you are in daily communication with Havre, as matter of fact? A. Every day, by telephone every day.

Q. What report is it the rule of the company to require of their captains as to their voyages? 2960

Objected to on the ground that the rule is the best evidence, not the oral testimony about it; if there is any rule, no rule having been proved.

A. After each trip the captain sends the special report to the head office in Paris.

Q. That is called the Rapport de Mer? A. The Rapport de Mer.

Q. (Handing witness paper.) Is this one of the blanks you use for that purpose? A. It was and it is.

The blank form is offered in evidence, and marked Petitioner's Exhibit 34 of this date. (Page 1215.) 2961

Q. Were reports made up according to that form during the entire time that you were in the service of the company at Paris? A. Yes.

Q. Were copies of the same delivered to each service? A. No, the same copy was transmitted to every service, and every manager had to sign it to show that he had seen it.

Q. What, if anything, was done by the company with the logbooks of the steamers, if you know?

Objected to as immaterial, except as to the time in question.

2962 A. I never saw any myself.

Q. Do you know if they were examined, or considered in any branch of the service in the administration?

Objected to as incompetent and immaterial.

A. In case of some accident, something unusual.

Q. Do you know whether or not it was the practice of the company to preserve those logbooks for any length of time? A. They were put with the old papers, and I suppose they are destroyed, with a quantity of old papers we had.

Mr. Benedict objects to the witness's suppo-
2963 sition as incompetent.

Q. Do you remember some time last summer, or it may have been in the spring, that I gave you an order made by Judge Brown, requiring the company to produce the logbooks of the *Bourgogne* and of any other vessels commanded by Commander Deloncle for two years prior to the collision? A. Yes.

Q. State what you did with that order?

Objected to as immaterial.

A. If my recollection is correct you came one evening to my office. I think you came yourself,
2964 and brought me that order of the clerk—I sent the order at once; it was on a Tuesday evening, I sent it at once; it was very late at night; you came very late and I sent it at once, with my paper to the legal service of Paris (Contentieux); and there must have been a memorandum, because I sent it at once, for I saw it was so important, with the date, and I must have put a memorandum with it as I do always with all those papers for the legal service in Paris.

Q. Do you do that by memorandum on the paper, or a slip, or anything? A. We have some pieces

of paper that we call memorandum; I would pin a memorandum, and put for what service it was. 2965

Q. Did you receive any response from the Paris office in regard to that?

Objected to as immaterial.

A. I received a letter.

Q. (Handing witness letter.) State if that is the letter? A. Yes.

Q. Who is it signed by? A. By our Vice-President, Mr. Cloquemin, and our manager, Mr. Dorigny.

Q. Are you familiar with their signatures? A. Yes. 2966

Q. And those are their signatures? A. Yes.

The letter is offered in evidence.

Objected to as already having been offered and ruled out, and as immaterial also.

Counsel for petitioner states that the statement of counsel for respondents as to the ruling out of this letter is incorrect, the Judge having ruled that it would be necessary for petitioner to call a witness to prove it.

The letter is marked Petitioner's Exhibit 35 of this date. (Page 1216.)

Q. You have never received the logbooks referred to in that letter, have you? A. No. 2967

Q. You haven't got them in your possession? A. No.

Q. Have you ever at any time had those logbooks in your possession? A. Never.

CROSS-EXAMINED BY MR. BENEDICT:

Q. I understand you to say you never saw any of those logbooks? A. I saw some in Paris.

Q. What logs did you see in Paris? A. Mr. Jones asked me if I had ever had them in my pos-

2968 session, and I said no. You asked me if I saw some, and I said yes.

Q. What logs did you see in Paris? A. I can't remember. When I was going in the office of Mr. Simon he may have asked—when I was going in the Maritime Department the man in charge may have shown me the logs.

Q. But you have no recollection of any particular log that you ever saw, I suppose. A. No, I have seen many.

Q. Do you remember that you ever saw any of the logs of the *Bourgogne* that were mentioned in that order? A. No; never.

2969 Q. When did you go into the service of the company? A. In 1879, about August or September; I can't tell you exactly.

Q. Do you remember one of the steamers of the company named the *Canada?* A. Yes.

Q. Where was she running in 1884, if you can tell? A. I can look in my books and tell you.

Q. Have you got your books here? A. No, I may find some in my office.

Q. Was she ever running to New York in 1884? A. Most probably she was on the New York Line; but I can't tell you certainly; we began our new service in 1886, the *Champagne* and the *Bretagne,* so most probably the *Canada* was going in 1884.

2970 Q. Do you remember where the *Labrador* was running? A. Probably New York.

Q. What about the *Olinde Rodriguez?* A. That was on the West Indies line.

Q. And the *St. Simon?* A. I have a recollection they made one or two trips to New York.

Q. And the *St. Germain?* A. That was a West Indies boat, but ran to New York sometimes.

Q. And the *Chatellier?* A. That is a cargo boat; she never came to New York.

Q. Do you remember whether the *Normandie* was

running to New York in 1884? A. Probably since 2971
1883; she must have been.

Q. Can you ascertain from your records accurately whether those vessels that you have mentioned were running to New York at that time, in 1884? A. I suppose so.

Q. Will you please to say, and you may write a letter without being called again to Mr. Jones or myself, where these vessels were running in December, 1884, the *Canada, Labrador, Olinde Rodriguez, St. Simon, Normandie, St. Germain, Ferdinand De Lesseps,* and *St. Laurent?* A. Yes.

Q. You have said that this form, which you produced here, was the form of report which was made 2972
by the captains. Did those reports come to you while you were there in Paris? A. When I was commercial manager.

Q. When was that? A. In 1895; my father died in December, 1894.

Q. Then until 1897 those reports came to you under that form? A. Yes.

Q. What did you do with them? A. Read them, and for my business, which was the commercial business, I had to look out for the freight and passengers, and I read them and took note of what the captains said, and passengers and freight, and then I sent it to another manager after I signed it. 2973

Q. What other manager? A. At that time we had five managers, five chiefs of service—manager is not the right term—and I sent it to any one of those; from one office to another.

Q. And you never saw it after? A. Of course, if I wanted to; but I kept a copy of it.

Q. But in the regular course of business it didn't come back to you? A. No.

Q. So that what became of it after it left your hands you really have no personal knowledge of? A. No.

2974 Q. In the course of business would those reports not be kept on file in the office? A. One year, or two may be; but really I can't tell you; I don't know; there is such a quantity of papers in a big administration, you know.

Q. (Handing witness paper.) Will you look at that paper and tell me whether that is the usual form of the company's bills of lading? A. No, I can't tell you; you know we print so many of them that I really can't tell; if I had one of them from the office I could tell you in a minute.

Q. Will you produce me one of the bills of lading? A. Certainly.

2975 Q. Has there been any change in the form of bill of lading since you have been agent here? A. Oh, yes, many times.

Q. What I want is the form that was in use on the voyage of the *Bourgogne*, or before? A. Very well; that means June, 1898.

Q. What I want to know is whether there have been any changes made since the time of the *Bourgogne?* A. I can't tell without reading all through.

Q. Can't you telephone your office and tell them to send you up a form, unless you can tell what changes have been made? A. I might do that.

Q. You say you were in Paris in the summer of
2976 1898. Who was in charge here after you left here? A. Mr. Faguet and Mr. Cauchois. I think I had orders from the company to give my power of attorney to both; but I am not quite certain; I will look it up.

Q. Do you know that Mr. Faguet had your power of attorney? A. Oh, Faguet, certainly; yes.

Q. You are not sure about Cauchois? A. I think he did; but I am not sure.

Q. (Handing witness a white paper.) Look at this one, and see whether that is the form? A. The blue one is the form for the freight line; but not for

our postal steamers; I cannot answer about this second paper. 2977

Q. I don't care about the freight steamers, as the *Bourgogne* had nothing to do with them. A. Very well. (Having called up the company's office by telephone, after talking with some one.) There have been changes, and they have none in 1898 in the office, because as soon as they make any change in the bills of lading the others are destroyed, not to use the old ones; but going into our archives I may get you an old one of 1898 and send it to Mr. Jones; but our freight man answers there have been changes between the bills of lading of 1898 and those now. 2978

Q. But you can't tell me what the changes are? A. No; it is too complicated; I will tell you, of course, by comparing them.

Mr. Benedict: I should like to have you here at such time again as is convenient for you, with the bill of lading, if you can give me an actual bill of lading that was in use at that time; if not, I want to know what changes have been made in the present form, and when they were made. What I want is to get the form of bill of lading that was in use at that time.

The witness states that Mr. Cauchois is a better man to testify on this matter. 2979

By Mr. Jones:

Q. Do you know whether this form of Rapport de Mer is still used by the captains of the company? A. I think so, yes.

Q. You have seen them in Paris since you have become agent here? A. No.

It is hereby stipulated that such of the witnesses of the official staff and crew of *La Bour-*

2980 *gogne* as have not yet been produced and examined are either dead or out of the jurisdiction of the Court, and beyond the control of the petitioner, and that the petitioner has exercised all proper diligence in producing the attendance of such witnesses and it is furthermore stipulated that the respective counsel for the respondents will not comment unfavorably upon the absence and non-production of any of such witnesses.

Mr. Jones: Counsel for the petitioner, in the event that the Court shall admit the decisions in cases of collision of the company's vessels, in other
2981 cases, will ask leave to introduce the following cases:

The decision of the Court of Appeals of Rouen in the case of the *Champagne* and *Ville de Rio Janeiro* reported in Vol. 3 of the Revue Internationale de Droit Maritime, for 1887-1888, p. 543; (Page 1220.)

Also the case of the *Bourgogne* and *Ailsa*, reported in 76 Fed. Rep., p. 868, and 86 Fed. Rep., p. 475, and 172 U. S. 646, No. 434, refusing a Writ of Certiorari;

Also the case of *La Bourgogne*, decided by the Court of Appeals at Paris, and reported in
2982 Vol. 5 of the Revue Internationale de Droit Maritime for the years 1899-1900, p. 598; (Page 1222.)

Also the decision of the French Court of Cassation, affirming that decision, reported in Vol. 16 of the Revue Internationale de Droit Maritime for the year 1901, p. 630. (Page 1231.)

Mr. Benedict: Counsel for respondents objects to the putting in of the decision in the Court of Appeals and the Court of Cassation in the case of the *Bourgogne*, without putting in the decision in the court of first instance. If they all go in I shall

make no objection to the inadmissibility or to the proof, but if only part of them are in I reserve that objection; but so far as the fact that these are copies of the decisions are concerned, there is no objection. 2983

Mr. Jones: My evidence for the petitioner, as I now understand it, is closed, with the exception of the examination of such witness or witnesses as may arrive by *La Champagne* to-morrow, and with the exception of the testimony of the witness Petiot.

Adjourned to Monday, December 31, at 11, at Mr. Benedict's office.

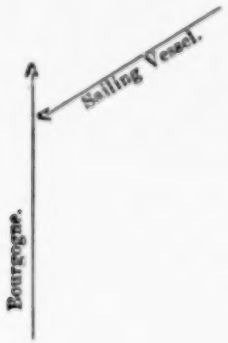
2984

Petiot Deposition.

MINISTER OF MARINE. REPUBLIC OF FRANCE.
Control. PARIS, Dec. 30th, 1901.
Merchant Marine.
Office
Commercial Navigation.

Interrogatory of Petiot, Jean, of St. Brieux, dwelling in Havre, 137 Rue Jules Lecoeur, boatswain.

At the moment of the collision was on the spar deck on the starboard side about the middle of the ship. Wind from S. W. light breeze and light swell on. 2985



2986 There was a thick fog and *La Bourgogne* was whistling frequently. Towards 5.10 o'clock Petiot heard a horn on the starboard side ahead and he at once turned to the side from which the sound came and suddenly saw the sails of a ship; she had all sails set except the royals.

No manœuvre was possible according to Petiot on account of the rapidity of the appearance of the English ship after her blast of the horn.

Petiot saw the collision. The bowsprit of the English ship began by carrying away the davits of boat No. 1, pulled down weather cloth of the bridge, cut into boat No. 3, and smashed boat No. 5.

2987 The cutwater of the English ship struck the hull of *La Bourgogne* at a place unknown to Petiot, but he saw the upper bridge cut into forward of boat No. 5.

Petiot went aft on the *Bourgogne* alongside of which the Englishman fell back, turning at the same time.

Bourgogne almost immediately took a list.

Petiot went towards his boat (No. 10).

Impossible to put it into the water, it being laden full of passengers who had already got into it.

Petiot went to boat No. 7, which could not be got into the water the list of the ship preventing the

2988 manœuvre.

At that moment the water filling it, Petiot threw himself into the sea without any life belt. He was picked up first by a raft, afterwards by boat No. 9 which took him on board with 13 others, the raft being left to go adrift.

Boat No. 9 took Petiot on board the *Cromartyshire*, where he remained.

Petiot saw the commander on the bridge all the time.

No dispute on board.

Petiot estimates that the English vessel must

have been going six knots, he does not know what 2989
the speed of *La Bourgogne* was.

(Signed) PETIOT.

An exact copy. The Chief of Bureau of Commercial Navigation.

(Signed) RILE.

Certificate of U. S. Consulate General of Paris. The Seal of the Ministry of Merchant Marine and the signature of Mr. Rilé, Chief of the Bureau of Commercial Navigation, are certified to be genuine.

(Signed) JOHN K. GOWDY,
U. S. Consul General, Paris.

2990

NEW YORK, February 27, 1902.

Present—Mr. JONES, Mr. R. D. BENEDICT, Mr. MURRAY.

THOMAS MOONEY, being duly sworn and examined as a witness for the petitioner, testifies:

By Mr. Jones:

Q. What is your business? A. Designing engineer for the Roach ship yard. 2991

Q. Where? A. Chester, Pa.

Q. What experience have you had as a practical marine engineer? A. I have been designing engineer for the last twelve years; assistant designing engineer for some twenty years.

Q. What does the occupation of designing engineer include? A. A designing engineer is responsible for the speed of a ship, for the workmanship and design of all machinery, boilers and pumps, and everything connected with a ship except the hull.

2992 Q. Have you at any time been connected with the Morgan Iron Works? A. I have, sir.

Q. How long have you been? A. I commenced with them in 1864.

Q. How long did you remain with them? A. I remained with them up until three years ago the first of March.

Q. Did you occupy the position of designing engineer, as you have described, with them? A. Yes, sir; all our plans.

Q. State whether or not the Morgan Iron Works did the engineering work for the Compagnie Generale Transatlantique's steamers in this city? A.
2993 They did, sir.

Q. When did you leave the service of the Morgan Iron Works? A. Three years ago the first of March coming.

Q. That was in March, 1899? A. Yes, sir.

Q. Did you occupy that position in the Morgan Iron Works at the time of the loss of the *Bourgogne* in the summer of 1898? A. I did, sir.

Q. Are you familiar with the *Bourgogne?* A. Yes, sir.

Q. Are you familiar with her engines and boilers and machinery generally? A. Yes, sir.

Q. When did you last do any work on the *Bour-*
2994 *gogne?* A. Just before we left for Chester; about a month before.

Q. When was that? A. In 1899; in the first of 1899.

Q. She was lost in July, 1898; you must be wrong about that date. A. I am, sir; of course I know very well I am wrong. It was in 1898, just before she was lost. In fact the very last trip of her.

Q. What work did you do on that voyage, if you recollect? A. Overhauled the boilers and steam pipes and some work around the blower engines.

Q. Anything else? A. Her safety valves and 2995
everything of that kind; our work was general, you know.

Q. Did you try her engines yourself? A. Yes, sir, and saw them working at the dock.

Q. What was the general condition of her engines and boilers at that time? A. First class.

Q. It has been stated here by one of the engineers of the *Bourgogne* who survived that although he was not on duty at the time of the collision, and therefore could not testify as to the number of revolutions the *Bourgogne's* engines were making, he was satisfied that she was going at a very much reduced speed, because when he went into the en- 2996
gine room immediately after the collision, he found that the engines had been stopped and that the safety valves were not blowing off. Can you state as an engineer whether that fact indicated that the pressure of the boilers was low or not, and that the speed of the ship was therefore a reduced speed. I ask you to explain this in your own way, if I have made myself understood.

Objected to on the ground that the testimony of the engineer has not been stated accurately; also that the question calls for an answer yes or no, and does not call for any explanation.

A. Yes, it was. 2997

Q. Will you please state why. A. Because if an engine was going along—if a ship was travelling along slowly and the engineer came down and indicating a pressure there; and if the safety valves did not blow you certainly ought to be running stopped your engine your safety valves would blow, slow, because there was low fires and low pressure of steam, and you could not make the revolutions to drive your ship.

Q. Another thing: Could this low pressure be maintained, consequently a reduced speed, and at

2998 the same time have a full reserve force in the boiler for reversing, and if so explain why? A. Yes, it can; by throttling your engines, or in other words closing your throttle valve, you will keep a low pressure of steam on the boilers, and then if a signal was given to the engine room to reverse, with one movement of the hand you would reverse your engines, and with the other open your throttle valve and then use up the steam in your boiler, to go full speed back.

Q. Would there be a full pressure for reversing purposes? A. Yes, sir; up to the boiler pressure at that time; she would go back.

2999 Q. What do you mean by boiler pressure in such cases? A. If a man was carrying six kilos, eight kilos, ten kilos, whatever it may be at the time due to the closing of the throttle valve, of course he could back full speed, which at that pressure would give the turns.

Q. And if I understand you aright this condition of things is entirely consistent with a low pressure in the boilers? A. Yes, sir.

Q. And with closed ash boxes for that purpose? A. That is the only way you can keep it, by closing the ash pan doors.

Q. One of the witnesses for the claimants in this case, Mr. Gilbert, at page 830 of the testimony, was
3000 asked this question, and gave the following answer: "Take this case, an engine, the maximum of whose "boilers is eleven kilos and a half supposing she "was running at a less pressure than that, and the "engine is stopped, would that have an effect to "make the safety valve blow off? A. No, it would "not." Will you please state, as an engineer, whether that answer is correct or not? A. The safety valve would blow inside of a minute.

Mr. Benedict objects, and moves to strike out the answer as not an answer to the question.

Q. (Repeated.) Will you please state as an engi- 3001
neer whether that answer is correct or not? A. No.

Q. Will you please explain why. This is a technical matter we want to be enlightened about. A. If a boiler's working pressure is eleven and a half kilos and the pressure would be, say, eleven kilos, and the engine were stopped suddenly, the generation of steam would be so fast that the safety valves would lift right away and blow, and make a deafening noise; they would blow within half a minute or so.

Q. Do you remember any trouble that the ships of the French line had about the blowing off of their safety valves while they were navigating slowly in the harbor here, going out and coming in? 3002

Mr. Benedict objects to anything on this subject outside of the case of *La Bourgogne*.

A. I do, sir.

Q. What was the trouble?

Same objection.

The Witness: I will say as to the *Bourgogne*.

Q. Was that difficulty with the *Bourgogne* as well as with other ships? A. Yes, sir.

Q. What was that difficulty? A. If you should come to a stop for any cause the steam from the safety valves would make such a deafening noise 3003
that nobody could hear; the captain on the bridge couldn't talk with anybody; nobody could hear without great difficulty.

Q. Did you succeed in remedying that? A. No, sir; we could not.

Q. That condition of things existed up to the time that you ceased to work in the French line? A. Yes, sir.

Q. Coming back to a reversal of the engines under a reduced pressure, I wish you would make

3004 this plain to me. If the actual pressure on the boiler was much reduced by the closing of the ash boxes, am I clear in understanding you to say that the closing of the throttle valve, and thereby diminishing the force of the steam on the engines, you could still leave a full pressure in the boilers for reversing purposes? A. Yes.

Q. And that is done by the use of the throttle valve? A. Yes, sir.

Q. Are you familiar with the lifeboats of the *Bourgogne?* A. Yes, sir.

Q. Do you know what boat-disengaging apparatus she had? A. She had a block and fall with a
3005 little link like.

Q. Do you know of any other appliances in general use at the time of the collision, which was superior to the boat-disengaging appliances that the *Bourgogne* had? A. There is none in my opinion; there is none.

Q. And there was none at the time? A. No, sir.

Q. Are you familiar with a patent appliance known as the Standard Automatic Releasing Hook? A. I am.

Q. Is that appliance in general use? A. It is not.

Q. And therefore it was not in general use in the summer of 1898? A. No, sir.
3006

Q. Do you know anything of its merits, if it has any merits? A. I know something of its demerits.

Q. Will you state what they are, if you know, as a practical appliance? A. There is great danger of those pins rusting fast and then when you go to pull one or the other, one end may disengage the boat and spill everybody out, and next, the lifeboat may not be just water-borne, the seas come up and strike it and the blamed thing may trip and spill everybody out on their noses.

Q. Can that appliance be operated, as is claimed, 3007
by one person? A. Not very well, sir.

Q. Do you know any boat releasing device in use at the time of the loss of the *Bourgogne,* which was capable of being operated by one person? A. None that was reliable. Our firm would not use any except the block and fall.

Q. And that was the appliance on the *Bourgogne?* A. Yes.

Q. Do you know whether other steamship building concerns use anything different? A. All the ships the firm John Roach & Sons have built since 1871 have used nothing but the block and fall.

Q. By John Roach & Sons do you mean the Mor- 3008
gan Iron Works as well as the works at Chester? A. I mean the Delaware River Iron Ship Building and Engine Company of Chester.

Q. And the Morgan Iron Works of New York? A. The Morgan Iron Works of New York only build the engines.

Q. Do you know of any appliance superior to the block and fall that was in general use by other ship building concerns? A. I do not.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Do you know of any ships that use the Stand- 3009
ard Automatic Releasing Hook? A. I do not know of one, sir.

Q. How many men would it take in a boat, using simply a block and fall, to disengage her? A. A man at each end.

Q. You mean a man at each end in a boat? A. Yes, sir.

Q. And how many men on the deck? A. None.

Q. I understand you to say that you don't know any ship that uses that appliance, and I understand by that that you have never seen the appliance worked; is that correct? A. No, I don't mean that.

3010 Q. Have you seen it worked? A. We tried it; a man wanted to use it——

Q. No, no, please. The question is as to whether you have seen that appliance work? A. Yes, I have tried it; but not on a lifeboat; when the man was trying to sell it.

Q. Not on any boat? A. Not on any lifeboat.

Q. On any boat at all? A. No, sir.

Q. You saw it operated in the hands of a man; was that the time that you saw it? A. Yes, sir.

Q. Was there only one man that operated it then? A. A man at each end with a little lanyard.

Q. Each end of what? A. At each block.

3011 Q. I don't quite understand; will you please explain what you did see? A. A gentleman came to the shipyard and wanted us to adopt it; but we saw——

Q. Never mind what you saw; tell me what you saw, not your judgment. A. We saw that the thing wouldn't work good.

Q. I ask what you saw; how they worked it. A. A little lanyard that you pull to trip it.

Q. Give a fuller description than that about the apparatus? A. The apparatus was a little hook; and then a link on the lifeboats is supposed to hook over into the bosom of this shackle.

3012 Q. What did you see? A. I saw them try to work the hook, but we saw the moment that he went to work these two joints would rust——

Q. I am trying to get at what you saw. Did you see anything but a hook? A. That automatic hook.

Q. Did you see anything but a hook? A. A model of it.

Q. No rope? A. Yes; a rope.

Q. Where did the rope run? A. It run a little lanyard just about three or four feet long.

Q. And that is the only rope there was on it? A. That is the only rope there was on it.

Q. So that all that you saw of the working of that 3013
article anywhere is that you saw one hook with a lanyard, about three feet, attached to it; is that all? A. Yes.

Q. You said that a man brought this there to try to get you to use it. Did he come alone, was he the only one? A. No, he came to Roach's shipyard.

Q. Did he come alone, or did he bring somebody with him? A. He was alone.

Q. Was it he that pulled the lanyard? A. No.

Q. Who pulled the lanyard? A. I.

Q. Who held the hook? A. A little block; like a little model of a block.

Q. You haven't mentioned any block? A. There 3014
is always a block——

Q. You said that all you saw was a hook and a rope. If you mean to add a block, add a block. A. We were talking about the Standard Automatic.

Q. You said all you saw was a hook and a rope about three feet long. If you add anything else you made a mistake, and correct it? A. I saw a block with little sheaves and two pins and a little lanyard with it.

Q. Was the block held up by anything? A. Yes, oh, yes.

Q. Who held it up? A. The man.

Q. This man held the block up and you pulled 3015
the lanyard? A. Yes, sir.

Q. When was this? A. I have seen it several times.

Q. But this time? A. I saw it at the Morgan Iron Works and at the shipyard.

Q. Did the same man come both times? A. No, I don't know who the man was; I have no idea.

Q. Was it the same apparatus that you saw on both occasions? A. Yes, sir.

Q. And one man brought it on each occasion? A. Yes, sir.

Q. And on each occasion he held up the block and

3016 you pulled the lanyard? A. He had to, in order to illustrate it.

Q. (Repeated.) And on each occasion he held up the block and you pulled the lanyard? A. He had to; yes, sir; yes, sir.

Q. When were those two occasions? A. I couldn't remember the date now; it was some years ago; I should think it was about six years ago, one of them.

Q. Were they both about that time? A. No; one was later; just about the time I went to Chester; about three years ago, this gentleman was trying to introduce it.

3017 Q. You spoke of working pressure on a boiler. What did you mean by the working pressure? A. If a boiler is tested and allowed by the Government 150, 160, 170 lbs., that is called the working pressure.

Q. And the safety valve is set to blow off at that pressure, is it not? A. Yes, sir.

Q. If the pressure on the boiler is less than that the safety valve won't blow off until the pressure comes up to that, will it? A. No.

Q. How long the pressure will take to come up to that depends on the rate of pressure the boiler has at the time? A. It depends upon the fires in the boilers.

3018 Q. It does depend upon the pressure in the boiler and the heat of the fire to raise it to the proper pressure to blow off? A. That is hardly correct.

Q. Correct it if that is not the fact. A. It depends upon the fire in the boiler to increase the pressure, that is set by the safety valve.

Q. I thought that was what I said. You have said that if this man came into the engine room and the safety valve wasn't blowing off and the engine was stopped, that would indicate a reduced pressure in the boiler. That is correct, is it not? A. Yes, sir.

Q. Can you tell at all how much reduction that 3019
would indicate from having known only those facts, that the engine was stopped and the safety valve wasn't blowing off? A. If you will tell me how long the engine had been stopped——

Q. (Repeated.) Can you tell at all how much reduction that would indicate from having known only those facts, that the engine was stopped and the safety valve wasn't blowing off? A. It must have been reduced considerable.

Q. Can you tell how much, is my question? A. Very near.

Q. Wouldn't you have to know, in order to form any idea of that, as to what was the condition of the 3020
fires? A. Not necessarily.

Q. Did I understand you to say that with a certain pressure on the boiler when the safety valve is changed the pressure remains the same? A. No; not when you change the safety valve.

Q. If you close the throttle valve partially that will raise the pressure? A. We close the throttle valve——

Q. (Repeated.) If you close the throttle valve partially that will raise the pressure? A. Slightly.

Q. It depends on how much you close the throttle? A. Yes.

Q. Whether you would be able to reverse your engine full speed would depend upon the amount 3021
of pressure in the boiler, wouldn't it? A. Not necessarily.

Q. Do you mean to say you can reverse full speed at any pressure in the boiler? A. What do you call full speed?

Q. You understand my question. A. No, I don't; I beg your pardon.

Q. If you don't then you are not fit to be an engineer. A. I have designed as many engines as anybody in this port.

3022 Q. I put the question perfectly correct so that anybody who wants to answer can answer. (Question repeated.) Do you mean to say you can reverse full speed at any pressure in the boiler? A. Yes.

Q. So that as far as reversing at full speed, it don't make any difference whether the pressure on the boiler is eleven kilos or one; is that what you mean? A. Engines will not turn over at one kilo.

Q. Then it does make a difference what pressure there is on the boiler, doesn't it? A. No, I don't think we carry such a pressure as that.

Q. I agree with you. Do you mean to say that if the full pressure of the engine is eleven kilos and
3023 a half that the engineer, by reversing, on the reversal of the engine, can get a full speed reversal with six kilos? A. Not as many turns as the other.

Q. But he has got to have as many turns in order to have full speed? A. It depends on what you call full speed back.

Q. What do you call full speed back? A. A man may be running an engine at 61 revolutions going ahead, maintaining that at sea, to get across the ocean for instance; and he simply gets an order to back, and he may run down to eight kilos, ten kilos, and he can go back 53 turns, or 40 turns; that would be full speed back.

Q. Do you think that full speed back is a less
3024 number of turns of the engine than full speed going ahead? Is that your understanding of it? A. No, sir, no.

Q. Doesn't it take as many turns to full speed back as to go full speed ahead? A. I don't comprehend your question, if I could I could tell you blamed quick.

Q. Doesn't it take as many turns of the engine of a steamer to go full speed back as it does to go full speed ahead? A. Pressure for pressure, yes.

Q. When did you have anything to do with the safety valve on the *Bourgogne* the last time? A. It

was the last trip I think; the last trip before she 3025
was lost.

Q. What did you do with it then, you yourself? A. Personally, I, nothing; I had my men there attending the work and overseeing it and looking at it.

Q. Did you ever oversee any work on it? A. Yes, sir.

Q. When was the last time for that? A. That last trip.

Q. What did you see done to the safety valve then? A. Tried to see if it worked and was free.

Q. And that is all? A. That is all.

Q. No change in the valve itself? A. Oh, no; 3026
that is a State's prison offense, to do that without the government's sanction.

Q. It might need to have something done. A. Then you have got to have the other fellows to come and do it.

Q. Can you tell how many pounds eleven kilos and a half is pressure? A. Yes, if you will let me figure it; 14.2 pounds to a kilo, and that multiplied by eleven and a half kilos will give you the pressure in pounds English.

REDIRECT-EXAMINATION BY MR. JONES:

Q. This gentleman who came and exhibited this 3027
Standard Automatic Releasing Hook apparatus did so for the purpose of exhibiting it to you to induce your company to adopt it, was it not? A. Yes, sir.

Q. He represented it to you in the best way he could? A. Yes, sir.

Q. As you understood it? A. Yes, sir.

Q. State whether or not, if this hook had been actually attached to the lifeboat, you could have had a better exhibition of its working than the one that was given to you? A. No.

Q. Coming back to this boiler pressure, let us

suppose this case: the full pressure of the *Bourgogne* was, say, eleven and a half kilos, but in order to reduce her speed the engineer allows the full pressure to run down to, say, eight kilos or nine kilos by closing the fire boxes; is that reduced pressure capable of such control by using the throttle valve as to enable the engineer upon a sudden order to reverse to use a full pressure of, say, eleven or eleven and a half kilos for a short time? A. He could not; he only started with ten, sir.

Q. What do you mean by that? A. He had ten pounds pressure in the boilers. Now he keeps that pressure on the boiler by closing the damper or closing the throttle valve. When he wants to reverse he reverses, but he opens his throttle valve wide and he gets the full volume of the ten-kilo pressure on the piston so that he can reverse like the mischief. The other way it is what is called wire-drawing, and the ten-kilo pressure would be on the boiler, which might not have six on the piston in the cylinder; but the moment you open the throttle you get the full ten-kilo pressure of the boiler on the piston, and she goes around like the mischief.

Q. How long would that last, that full pressure? A. That might last ten minutes.

Q. Then this is accumulated steam which rises in boilers by reason of the partial closing of the throttle? A. Yes, sir.

Q. And this accumulated pressure, if I understand you right, does not mean that the fires are burning at their height and that the pressure in the boilers is full pressure? A. You are correct.

Q. I mean by the pressure in the boilers the full running pressure? A. Yes.

Q. Is there such a term in marine engineering as linking up? A. Yes, sir.

Q. What is that operation? Just describe it as

if you were trying to educate a green, inexperienced 3031
youth. A. To link up means to runs main links of the engine in so that you don't use so much steam in the cylinder. When the links are full gear the steam may follow in the cylinders four feet out of five. By linking up you would only use maybe three feet, and you don't use the volume of steam. You hold it, or keep it in reserve on the boilers in case of emergency. And that emergency may arise if you get an order to back. That is the idea of linking up.

Q. That is done, is it not, when the ash boxes are closed and the fires lowered. A. It has got to; yes, sir; either do that or close your throttle; either 3032
one.

Q. So that either or both of these operations would result in a reserve pressure for reversing purposes and at the same time not have full pressure in the boiler for continued steaming? A. Yes, sir.

Q. What indication would an engineer get from the bilge pumps that an engine was running slower than full speed? A. Every turn of the engine makes one stroke of the bilge pump and he tells in a minute.

Q. One of the *Bourgogne* witnesses, Nicolai, at page 395, was asked, "Q. Do you know whether there 3033
was any reduction of the revolutions of the engine during your watch?" And he answered, "Yes, I noticed that our pumps were not throwing as much water as usual, from which I saw at once that the engine was going slower." This witness testifies that he was stationed at the bilge pump; is that an ordinary phenomenon in marine engineering? A. Yes, sir; that is perfectly correct; absolutely correct; because the bilge pumps move with the engine in the *Bourgogne's* case.

Q. Is that true with other engines? A. A large

3034 majority of them; in fact, with all the engines ever built by John Roach & Sons.

Q. John Roach & Sons did not build the *Bourgogne?* A. No; but you asked about other engines.

Q. I understand you to say that that was the fact in the case of the *Bourgogne?* A. Yes, sir.

RECROSS-EXAMINATION BY MR. BENEDICT:

Q. I understand you to say that with every revolution of the engine there would be a stroke of the bilge pump? A. Yes.

Q. So that if a man knew the strokes of the bilge pumps he could know the strokes of the engine?
3035 A. Yes, sir.

Q. And if a man knew the strokes of the engine he could know the strokes of the bilge pump? A. Yes, sir.

Q. Could he tell anything about the strokes of the engine if he didn't know how many strokes the bilge pump was making? A. Of course not.

Q. Tell me if the throttle valve of an engine is wide open isn't the pressure on the boilers and the pressure on the piston the same? A. No, sir.

Q. What is the difference? A. It will run as low as ten or twelve pounds less on the piston than on the boiler.

3036 Q. Then when you speak of accumulated pressure, suppose that accumulated pressure was eight kilos, which was obtained by shutting off the throttle; by, say, half closing the throttle, and then you opened the throttle wide; you wouldn't expect to get eight kilos pressure on the piston then? A. Not quite.

By Mr. Jones:

Q. What does the throwing of less water by the bilge pumps indicate? A. That the engines are going slower.

Q. Can the speed of the engine also be ascer- 3037
tained by putting the engineer's hands on the steam pipes? A. He might by listening; by putting his hand on and listening.

Q. Suppose that in the case of the *Bourgogne,* at the time of the collision the fires had been so reduced as to make a pressure of, say, seven kilos. Do I understand you to say that in that condition of things there would be a blowing off of the safety valves immediately upon stopping the engines? A. *Oh, no, sir;* no.

Q. This is an engineering problem. Will you explain to me in your own way why it is that you concur in the statement of Mr. Laisne that he was 3038
satisfied that the *Bourgogne* was going at a low rate of speed and under reduced pressure by the fact that the safety valves didn't blow off?

Mr. Benedict objects that it assumes that the witness does concur with Mr. Laisne, whereas Mr. Laisne did not say that.

A. From the very reason that when the engine was stopped the valves did not blow is the indication that the pressure was low and the fire poor, because with any kind of fire at all hardly you stop the engines and the steam would accumulate fast and raise the safety valve and make a tremendous 3039
noise, a deafening noise, I would rather put it.

Q. Then in that condition the pressure in the boilers would run up rapidly; is that what you mean to say? A. Yes, sir; not very rapidly, because the fires are poor.

Q. In about what length of time; say there is a reduction of pressure to seven kilos; about how long would it take for the steam to run off so as to blow off the safety valve? A. They ought to blow off in about anywhere from five minutes to ten minutes. You have stopped using the steam.

3040 By Mr. Benedict:

Q. It would depend upon the condition of the fires, wouldn't it? A. He didn't ask me that.

Q. Did you ever see the boats of the *Bourgogne* put in the water? A. No; oh, no.

Mr. Jones: Mr. Benedict, I call your attention to a letter which you wrote to me on the 28th of December, 1901, of which the following is a copy, and I ask you to state whether or not you call for the form of the passage ticket and the form of the bills of lading mentioned in that letter, in behalf of the persons you represent as proctor, or whether
3041 you call for it in behalf of all those for whom you appeared both as proctor and counsel?

Mr. Benedict: I gave no thought when I wrote that letter to the question in whose behalf I wrote it. Of course, I wrote it as for all parties for whom I am proctor or my firm is proctor; I assume, of course, that it is a letter fairly to be dealt with as having been written in behalf of all the parties for whom I have been retained and am acting as counsel. I can not now without looking the matter up tell you what those names are.

Mr. Jones: Will you kindly look for them and tell me the names of those for whom you appear as
3042 proctor, and the names of those claimants for whom you appear as counsel.

Mr. Benedict: I will, sir; I have nothing to conceal about it.

The letter above referred to is as follows:

3043

LAW OFFICES
OF
BENEDICT & BENEDICT,
68 WALL STREET.

NEW YORK, Dec. 28, 1901.

EDWARD K. JONES, ESQ.,

DEAR SIR:

In the *Bourgogne* case I want a copy of the form of the passage ticket as well as of the Bill of Lading in use at the time of the voyage in question. Will you instruct M. Cauchois (?) to have that also when he brings the Bill of Lading.

Yours truly, 3044

R. D. BENEDICT.

Mr. Jones: You have put in the case a particular clause of the ticket, and I am going to put the whole of those conditions in.

Mr. Benedict: If you offer the passage ticket let me see what you offer.

Mr. Jones produces the passage ticket for the inspection of Mr. Benedict.

Mr. Benedict: Is this the one that Mr. de Bocande had?

Mr. Jones: That is the one. 3045

Mr. Benedict examines passage ticket, and says: If you state that that is the paper, which I am not able to remember, from which I put in one clause, I don't see why you are not entitled to put in the rest of it as far as I am concerned.

Mr. Jones: I do make that statement.

Mr. Jones offers the ticket in evidence, and it is marked Petitioner's Exhibit 36 of this date. (Page 1217.)

3046 Mr. DE BOCANDE recalled for cross-examination:

By Mr. Murray:

Q. This form of passage ticket has been offered in evidence as the form of ticket used by the Compagnie Generale Transatlantique. Is that the same form that was in use in 1898? A. I suppose so.

Q. Do you know? A. I answered that already in my last examination. I answered Mr. Benedict about it.

Q. Are those the only stipulations that were in the tickets that were used in 1898? A. I can't
3047 answer that exactly; if I remember correctly I answered about that to Mr. Benedict.

Q. This is what you answered before (showing witness his former testimony). Was there any other form of ticket in use in 1898? A. I don't think so.

Q. Was that same form in use in all classes of passage? A. Yes.

Mr. Jones: Except as to the color of the ticket.

A. (Continued) I answered that already; white, pink, and blue; first, second and third.

Q. Did all of the three different shades of tickets have all of the stipulations printed on the face of
3048 them? A. They have all the same except for baggage indemnity; the amount of indemnity for baggage varies with the price paid for passenger, first, second and third. I think it is $100 for first class and $60 for second and $30 for third class. All the other clauses are the same, to my knowledge.

Q. Did all the tickets have the stipulation printed on the face of the ticket? A. This way, to my knowledge.

By Mr. Jones:

Q. That is, you mean all the tickets sold here in New York for Havre? A. Yes.

3049

By Mr. Murray:

Q. Did the tickets at that time run in a series, numbered? A. Yes; always.

Q. Was Mr. Paul Faguet the agent in charge of the office in 1898? A. Yes, sir; I was in France.

Examination of Mr. de Bocande is suspended in order that Mr. Murray may make a statement.

A. Gordon Murray, being duly sworn and examined as a witness for the claimants, testifies:

In July, 1898, I was a clerk in the office of Gayley & Fleming, at the time of the loss of the *Bourgogne*. I called at the office of the company in Bowling Green, and saw the agent, Mr. Faguet, in charge of the office at that time, and requested him to show me the form of the ticket used. He did so, and the ticket was a square pink ticket with stipulations printed on the back, with no reference made to the stipulations on the face of the ticket. He wouldn't allow me to take one of them with me. 3050

Cross-examined by Mr. Jones:

Q. Did you notice the class of the ticket that he showed you? A. I don't recollect the class. I know it was a pink ticket; but I made a copy of it, which was in French, but the copy I have not been able to find in the last eighteen months, although I have looked high and low for it. 3051

Q. You say it was in French? A. I am not sure whether that was in French, or whether one that another person showed me was in French; a Mrs. le Gallon, I think her name was.

Q. Where and when did you see that ticket in the hands of Mrs. le Gallon? A. It was about the same time, in the summer of 1898.

3052 Q. Where was it? A. It was at her place on Fourth avenue, just opposite Twenty-eighth street, New York City.

Q. Do you know whether that ticket read from New York to Havre, or Havre to New York? A. The one that she had?

Q. Yes. A. I am pretty sure it read from New York to Havre, because she was about to embark on the vessel for France; it was the ticket that she had.

Q. Are you willing to swear of your own knowledge and with positive recollection that that ticket that you have just described in the hands of
3053 that lady was a ticket from New York to Havre? A. No, sir; I am willing to swear that the ticket I saw in the office of the company in Bowling Green was, as I have stated.

Q. How have you stated that? A. I say the stipulations were on the back of the ticket.

Q. How did the ticket purport to be, from Havre to New York or New York to Havre? A. I am not able to say.

By Mr. Benedict:

Q. What did you ask Mr. Faguet for?

3054 Objected to, as the witness has already stated what he asked Mr. Faguet.

A. I asked him for a copy or form of the ticket which was in use at the time, and that was what he showed me, and it must have been in English, because I am not a French scholar.

By Mr. Jones:

Q. But you said a few moments ago that it was in French? A. No, I didn't; I said that it might have been—that I thought the one that Mrs. le Gallon showed me was in French.

Q. Are you willing to state that the ticket that 3055
Mr. Faguet exhibited to you, such as you have described, was in English? A. I think it must have been.

Q. Are you willing to make that statement? A. I think it was in English; my best recollection is that it was in English.

Q. You went there for the purpose of fixing something in your mind, didn't you? A. I did.

Q. You went there to scrutinize this ticket? A. I did.

Q. To examine its conditions, for the purpose of your use in the conduct of this case? A. Yes; and made a copy of it. 3056

Q. And yet you are not willing to swear positively that that ticket was in English? A. My best recollection is that it was in English.

Q. Will you swear positively that it was in English? A. My best recollection is that it was in English.

Q. Will you answer my question? Will you swear positively that the terms and conditions of the printed matter on that ticket were in the English language? Will you or will you not? A. I say that my best recollection is that it was in English.

Q. Why don't you answer my question? A. 3057
That is the best I can say.

Q. Will you swear positively that that ticket was in English? A. My best recollection is that it was in English.

Q. That doesn't answer my question. A. I can say I saw one in the office which I took a copy from, and I saw the one that Mrs. Le Gallon had.

Q. You are a lawyer and you have been all over that, and you know that I am entitled to an answer to my question. I ask you now are your willing to swear that that ticket that Mr. Faguet exhibited to

3058 you was in the English langauge? I want an answer, yes or no. A. I might be a little wrong again on the subject of differing from you, but I don't know that I am compelled to testify to something that I can't say; I can testify to my best recollection and give the reasons for it.

Q. Are you willing to swear that this ticket was printed in the English language? A. I think it was.

Counsel for the petitioner moves to strike out the testimony of this witness, on the ground of his refusal to answer a plain direct question.

3059 By Mr. Benedict:

Q. Did you make a copy of that ticket in the office of the company? A. I did.

Q. What did you make a copy from? A. I copied it from the ticket.

Q. In what language did you write it? A. In English.

Q. Are you able to translate French into English so as to have been able to translate that ticket? A. Not fully or fluently. I might have been able to get the sense of the ticket.

Q. Did your writing of the copy of the ticket consist of a translation or was it a copy? A. Oh,
3060 it was in English.

Q. Was it a copy of what you saw or was it English that you made of a translation? A. It was a copy I made; it was English.

By Mr. Jones:

Q. You think that Mrs. Le Gallon's ticket was in French? A. Yes, because she read it to me; I know that was in French; I was looking over her shoulder.

Q. You know that to be so? A. I know that to 3061
be so.

Q. It read from New York to Havre? A. I don't know that; I should think it would, because she had bought her ticket and purposed going on the steamer in a day or two.

Q. You are a lawyer and you have testified to what you think. Do you know that Mrs. Le Gallon bought that ticket in New York? A. No; I know that she had the ticket.

Q. But you stated that she bought the ticket in New York? A. No, I didn't; I say that she showed me a ticket and that I knew at that time that it was her purpose to go on the steamer. 3062

Q. How did you know that? A. Because she said so, and she said at the time, "You can't possibly recover for Mrs. Henry because they have the stipulations on the ticket." And she took it out of her pocketbook and read it to me.

Q. You are sure that that was in French? A. I am as positive as I can be that that was in French.

By Mr. Benedict:

Q. Were the clauses on that ticket on the front or the back? A. They were on the back.

3063

EXAMINATION OF MR. DE BOCANDE CONTINUED:

By Mr. Jones:

Q. I will ask you to state whether the company, since you have become agent, or at any time before, within your knowledge, ever issued a ticket in this country for passage from New York to Havre in the French language? A. Yes, sir.

Q. They have? A. Yes, sir; return tickets from Havre to New York; that is what Mr. Murray has seen probably. If you ask for a return ticket New

3064 York to Havre and Havre to New Yok, we sell in America the ticket New York to Havre, and we have some French tickets issued in Paris sent to us to be sold from Havre to New York; and that is probably what Mr. Murray saw.

By Mr. Murray:

Q. What did Mr. Faguet show me? A. That I don't know.

Mr. Benedict: You had better produce the ticket, Mr. Jones.

The Witness: I could not give a ticket to any-
3065 body in the world.

Q. Aren't a great many tickets sold for your steamers by agents throughout the country? A. No; not many.

Q. Don't Thomas Cook & Sons sell your tickets? A. I don't think so; they sell orders on us and they come and change for tickets. I don't know; I can give you the information exactly; they would give you an order on me Deliver to Mr. So-and-So a first-class passage from New York to Havre, such and such a steamer.

Q. And Cook takes the money? A. Yes.

Q. So that he has to exchange what he gets? A.
3066 He gives the order to the passenger who comes to us.

Q. Does that order that Cook furnishes have these stipulations in it? A. I don't remember; I must look for that.

Q. Have you any records in your office to tell whether tickets were purchased for Mrs. John Perry and her four children, at your office, or by the agent up in Broadway and Twenty-eighth street? A. I was not here; I cannot tell you.

Q. Have you any records in the office? A. Our accounts will show that; then you can always see

who has paid the amount of passage, if it was Mrs. 3067
Perry or somebody else.

Q. Can you tell where Juliet Cicot purchased her ticket? A. No.

Q. Did you say you would look at the records and see? A. Oh, if you like, yes; but I can't tell you now.

Mr. Jones: Look it up, and tell us.

Mr. Murray states: Mr. Faguet had a small office back of the main counter and I went into his office and asked him if they had any returns or knew anything about a passenger, Juliet Cicot; he said they had not, but that he would give a certificate such as they had given, and had one of the clerks take down 3068
a letter-book and make a copy of the form of certificate which they had furnished to other passengers, putting in the name of Juliet Cicot; and that I will produce. While that copy was being made I was furnished a copy of a ticket, which he gave to me, as the ticket in use at the time, and I made a copy of it while the other certificate was being prepared. Mr. Faguet did not translate it to me; he wasn't present when I read it.

Mr. Jones: I offer in evidence sections 435 and 436 of the French Code de Commerce, the French text of which is as follows:

3069

"435. (L. 24 Mars 1891). Sont non re-
"cevables:

"Toutes actions centre le capitaine et les
"assureurs, pour dommage arrive a la mar-
"chandise, si elle a été recue sans protesta-
"tion;

"Toutes actions contre l'affréteur, pour
"avaries, so le capitaine a livre les marchan-
"dises et recu son fret sans avoir protesté.

"Ces protestations sont nulles si elles ne
"sont faites et signifiées dans les vingt-

3070 "quatre heures et si, dans le mois de leur "date, elles no sont suivies d'une demande "en justice.

"436. (L. 24 Mars 1891). Toutes actions "en indemnité pour dommage provenant "d'abordage sont non recevables si elles "n'ont été intentees dans le délai d'un an à "compter du jour de l'abordage."

Mr. Benedict: I object, as immaterial, it having no bearing on the questions involved in this case.

By Mr. Jones:

3071 Q. Mr. de Bocande, I call your attention to a copy of an order of the company for the 19th of December, 1884, in reference to precautions to be taken by the company's steamers in navigation, printed on page 631 of the testimony. Have you at my request inquired of the company whether any orders of a similar kind were issued by them since the date of that order?

Objected to as incompetent and immaterial.

A. Yes, sir.

Q. What was the result of that inquiry?

Objected to as incompetent and immaterial.

3072 A. They didn't find any other instructions.

Q. Are you familiar with a publication entitled "Reglements de Service a bord," issued by the company? A. Yes.

Q. Do you recognize this as a copy? A. Yes, sir.

Q. Was a copy of that publication on board the *Bourgogne* when she was lost? A. I suppose so; it is on board every steamer.

Mr. Jones: I offer in evidence Articles 393, 394, and 395 of those regulations, and ask the witness to state whether or not these sections embody in a

permanent form the substance of that order of 3073
1884?

Objected to on the ground that the regulations speak for themselves.

A. Yes.

Mr. Benedict: I should like to cross-examine a little on this.

CROSS-EXAMINED BY MR. BENEDICT:

Q. Have you any other knowledge with reference to the regulations which have been shown to you except what is derived from an inspection of this 3074
book? A. I don't understand what you mean.

Q. Have you any other knowledge with reference to those three articles which have been shown to you, except what you have learned by an inspection of this book? A. I know it is the rule of the company.

Q. Have you any other knowledge—— A. I know that nearly by heart; it is a rule of the company.

Q. Have you any other knowledge with reference to the regulations which have been shown to you except what is derived from an inspection of this particular book? A. I have knowledge of my com- 3075
pany's concerns; that is, instructions to our captains; by letters and by circulars of my company confirming these instructions.

Q. And all those letters, then, are since the publication of this book? A. I have received that——

Q. Since the publication of this book? A. It was begun with the company and this book is produced with this circular.

Q. It was published in 1891? A. But it is the edition; it is forty years old and I can prove it to you.

3076 Q. You will have to bring the books. A. If I was in Paris I could show you in five minutes that this book is forty years old.

Mr. Benedict: I object, as it appears that the regulations which have been shown to the witness are in a book which was published in the year 1891, and therefore the regulations in question are immaterial.

By Mr. Jones:

Q. Are you familiar with the signature on the title page? A. It is the signature of a Mr. Cherbuliez, one of the directors of the company; he died
3077 two years ago.

Q. I believe that you stated that copies of these regulations were, to your knowledge, on all the stipulations of the company, including the *Bourgogne*, at the time of her loss? A. Yes; I have been in the company since twenty-five years, and I know that book since I am in the company.

The book is marked Petitioner's Exhibit 37 of this date, subject to Mr. Benedict's objection. (This exhibit is not on file in the office of the Clerk of the District Court.)

By Mr. Benedict:

3078 Are you aware that the company has stated in answer to interrogatories put in in this case that their Reglemente d Service a bord had been withdrawn for correction? A. I think yes.

Q. This book that you have been shown here is a book that has been issued, printed, since that withdrawal, has it not? A. Excuse me; it is not a book; it is an edition of the book.

Q. This edition that you have seen? A. I have seen it for the first time.

Q. This one that you have been shown here to-

day is one which has been issued by the company 3079
subsequent to that withdrawal? A. I don't know.

By Mr. Jones:

Q. Don't you know when they are withdrawn? I do. A. I think so; but I don't know the date; I don't know; may be it is.

Mr. Jones: Find out. *I* know.

By Mr. Benedict:

Q. Are you aware that the company, in answer to interrogatories put on behalf of Deslions in this case which requested them to give any regulations 3080
that they had in reference to speed of that vessel, furnished a regulation which they said was the regulation which they had given to the captains of their steamers; are you aware of that? A. I don't know anything about it.

Q. If they did so state do you mean to say that they didn't state what was true? A. I know nothing about Mr. Deslions or the interrogatories.

Q. If they did so state, that the regulation which they made was the regulation which they had issued, do you mean to say that that statement of theirs was not true? A. I can't answer; I tell you I know nothing. 3081

Q. You can tell whether you mean to say that it is not true? A. My company cannot make any untrue statement, and so I cannot answer that.

Q. Have you in your possession any edition of the Reglemente de Service a bord of the company which was in use at the time of the loss of the *Bourgogne?* A. When I took the agency in 1897 I found an edition which I have now.

Q. (Repeated) Have you in your possession any edition of the Reglemente d Service a bord of the

3082 company which was in use at the time of the loss of the *Bourgogne?* A. Yes; since 1897.

Q. You have it in your possession? A. Since 1897; I mean to say when I took the agency I found a book like that which is here yet; it must be here since fifteen years.

By Mr. Jones:

Q. I wish you would stop and think a moment, and tell me if you can remember about when this Service a bord, of which we have been speaking here, was withdrawn for revision? A. In the year 1900.

3083 Q. You think it was in 1900? A. About.

Q. Do you know whether it was subsequent to or before the loss of the *Bourgogne?* A. Oh, certainly; it was after the loss.

Q. You are sure of that? A. Yes.

Q. Are you able to state whether or not these regulations 393, 394, and 395, which have been offered in evidence, were in this work and in possession of the captain of the *Bourgogne* at the time of her loss?

Objected to, because it appears that the edition which was in force at the time of the collision is in the possession of the company,

3084 and that is the best evidence.

Mr. Benedict: I see that I have misunderstood this, having in my mind that this book was published in 1901, instead of 1891. I withdraw the objection to the offering of the three sections, 393, 394 and 395.

UNITED STATES DISTRICT COURT, 3085

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the steamship "LA BOURGOGNE," for limitation of liability. 3086

TESTIMONY taken out of court on behalf of the claimants and respondents at the office of Messrs. Benedict & Benedict, 68 Wall Street, New York, October 24, 1901.

Present—Mr. BENEDICT for the claimant.
Mr. JONES for the petitioner.

CHARLES LIBRE, being duly sworn and examined as a witness on behalf of the claimants and respondents, testifies: 3087

By Mr. Benedict:

Q. Where do you live? A. I live 606 South 16th Street, Philadelphia.

Q. What is your business? A. Chief cook.

Q. Were you on board of the *Bourgogne* at the time of her loss? A. Yes, sir.

Q. What class passenger were you? A. Second class passenger.

Q. The night before the collision what time did

3088 you turn in? What time did you go to bed? A. I went to bed about half-past eleven.

Q. Do you know what the weather was at that time? A. The weather at that time was nice, fair.

Q. Had the lights been put out on the *Bourgogne* at that time? A. Not when I went down; the lights were open yet.

Q. Do you know whether there was any dancing or any champagne drinking on the *Bourgogne* that night? A. I heard there was some champagne drinking and dancing and I heard some music from the first class. Of course, I didn't see it but I heard some kind of music.

3089 Objected to as incompetent, inadmissible and hearsay.

Q. How late? A. About 11 o'clock; but I heard the music very well.

Q. Were you asleep at the time of the collision? A. Yes.

Q. What waked you up? A. The shock.

Q. What did you do when you were waked? A. As soon as I was waked—I didn't know what was the matter—I was with my two children and I rushed upstairs to see what was the matter and then I see the greatest of confusion, you know; all the sailors were running around, everybody seems
3090 to me to have lost his head; so I went down and dressed my two children and I come on deck. When I was on deck I see we was commencing to list a little on starboard, you know, so Yussouf, the Turk wrestler, and I we tried to take some of the lifeboats out but unfortunately it was canvas on top of those boats; all we could do was to take the canvas away but we could never take the chains out of the boat then.

Q. Were the boats held by those chains? A. Those lifeboats was held on the *La Bourgogne* with

those chains; so we succeeded to take the canvas 3091
what was on top of the boat, and as soon as we took that out of course it was crowded with passengers. I took my two children you know—being a little—you are stronger generally then—and put them on the boat, and I wanted to jump on it myself, but it was too late, the boat was crowded already. I felt sure you know, some of the officers or crew would do something, but you know they didn't do nothing at all, and we was waiting there. I felt sure enough that a big boat like that wouldn't go down; the weather was pretty near smooth. Of course, it was foggy—and all at once I saw two lifeboats full of sailors and firemen going away from the front of 3092
the boat, you know, and leaving the *Bourgogne*. That is what they done about an hour after.

Q. After what? A. After the collision, 45 minutes or an hour, I can't tell, but I am sure it was 45 minutes at least, I am positively sure. *La Bourgogne*, you know, went right way on one side, you know, and the stern went down and I sank with the boat, and when I come up, you know, the boat was straight like that (indicating) and going down slowly.

Q. The *Bourgogne* was? A. Yes—so, I am a pretty good swimmer—my two children I could never see them no more—well, I commenced to 3093
swim and I saw the officers was on that bridge, you know, Capt. Deloncle, and in fact doing nothing at all, didn't do nothing, and the *La Bourgogne* sunk down gradually, and I was eight hours and a half in the water, and we had to do some fighting in the water with those sailors which I called pirates, real pirates, when I did land on board, when I was picked up——

Q. When you came out you and Yussouf went to a boat on which side? A. In the—we was on the starboard, the other is fore and that was on the——

3094 Q. On the opposite side from where she was struck? A. Exactly, yes.

Q. And whereabouts, fore and aft, was the boat that you went to? A. It was on second class, you know, one of those lifeboats what was on the second class.

Q. I mean from the bow to the stern, about where was this boat? A. It was near the stern.

Q. How long after the collision did you go to that boat? A. I went to that boat may be twenty minutes after the collision. I dressed my two boys as quick as I could and myself—I only had my pants on of course—and we tried to take that boat
3095 away. It was about 25 minutes.

Q. When you got there had anything been done to get out that boat? A. Nothing at all.

Q. How many of you were there that tried to get that boat out? A. It was Yussouf and all the passengers and I and you know the majority of the passengers were women and children; of course they were standing there waiting—there was only one sailor; there was no discipline, nothing at all.

Q. What difficulty did you find in getting the boat out? A. The difficulty we found was to take the chain, you know, what held the lifeboat to the steamer; we couldn't get that out; being no sailor and having no experience in sailing, we was per-
3096 fectly—knew nothing.

Q. So that that boat was not got loose at all? A. Didn't get loose at all. And if that boat would have got loose I am sure eighty people would have been saved. If we had two sailors who could have helped we could have launched that boat easy.

Q. When you went to that boat had the steamer then begun to list over to the starboard? A. A little bit.

Q. Just a little bit? A. Just a little bit.

Q. Did you see anything done to getting out any

of the other boats? A. Didn't see nothing at all of 3097
the kind. All I see was the sailors run away.

Q. Did you hear any order given by any officer of that ship after the collision as to what was to be done with reference to saving the boats? A. Not one. I didn't see not one except when I was in the water; I didn't hear not one order given.

Q. You say that you were in the water for several hours? A. Yes, sir.

Q. How were you saved finally? A. Well, I was saved on a raft. I will tell you. Can I explain you the way it happened? I swam to the raft and that, I have already said, was crowded with sailors, you know, and when I went to get hold of it—of course, 3098
the raft was too crowded already, one of the sailors wanted to stab me. He hit me right on the eye and I did have that eye closed for about one month. I thought I was going to lose it. I turned around and went to the other side of the raft and hung on it and I hung there for about eight hours and a half.

Q. Holding on by a rope? A. No, just holding on the boat.

Q. The edge of the raft? A. Yes. There was a rope around this raft and I saw five women hanging on it and one of the sailors deliberately took his knife and cut the rope off, you know, and the five women went down and were drowned. We had on 3099
that raft about 30, something like that. It capsized three times. When the English sailors got us there were about eleven saved.

Q. During the time after the collision was the *Bourgogne* going ahead or still? A. We was going ahead all the time, even when we sunk. I think we were still going ahead when we sunk.

Q. How long did you remain on the *Cromartyshire*? A. We were about two hours and a half, three hours, I couldn't say. Then we sighted the

3100 *Grecian* and we made some signal and the *Grecian* came along and took us on board.

Q. On board of the *Grecian* did you see Mr. Laisné? A. Yes. That is where I had that kind of fight.

Q. Did you see Mr. Cammeau there on the *Grecian?* A. Oh, yes, Cammeau and Mr. Laisné? A. Three or four times.

Q. Was there anything said in that conversation by Laisné as to the speed of the vessel?

Objected to as inadmissible and incompetent.

A. I heard Mr. Laisné say very distinctly that—
3101 talking a private conversation where everybody was there—we was like a lot of cattle, of course—that the steamer was going 17 knots and a half when we got struck. I heard him say that twice.

Q. Was there any controversy between you and Mr. Laisné? A. Yes, sir.

Q. What was that about? A. Well, at one time we was on board of the *Grecian* and Mr. Laisné—we was 53 saved, about 53, I guess—and he said, "If I had a revolver I would have shot some of those dirty passengers." Of course, that rose me up and I went right straight to him and I said, "Well, you ought to be ashamed of yourself; what did we do
3102 to you after all the trouble what we had and you said you would shoot us." So he said, "Yes," he said—I said, "One thing, your duty would be to save us instead of shooting us." He said, "I got nothing to do with duty"—you know we scolded, and I was so mad I told him—you know he had kind of a golden band around his cap—and the whole boat was present—I said, "You ought to throw that away, you ought to be ashamed to wear that after—a man ever done his duty at all." In front of those people he took that band and put it in his pocket.

Q. Was there any time when Mr. Laisné threat- 3103
ened you? A. Yes, Mr. Laisné wanted to jump on me. Of course I didn't stand it and Mr. Cammeau come, and an officer of the *Cromartyshire*, and stopped it, you know, otherwise for that it would have been a fight.

Q. How is your size compared with Mr. Laisné? A. That time Mr. Laisné was stronger than me. Of course, that time I was a little stronger than I am after passing through such an experience; but Mr. Laisné was a good deal stronger than me as I can about judge, physically.

Counsel for the petitioner objects to all con-
versations testified to by this witness with Mr. 3104
Laisné and Mr. Cammeau and others as incompetent and inadmissible.

Q. Whereabouts on the *Grecian* was it that Mr. Laisné said this about speed, that you speak of? A. When Mr. Laisné said about the speed on—not quite on the stern but going on the stern of the *Grecian*.

Q. And when was that? A. Well, this was—I could not exactly say, but that must have been in the morning, something about 11 o'clock; between 10 and 11.

Q. Of the next day after you got on board? A. 3105
Yes, sir.

Q. When was it that you had the difficulty with Mr. Laisné? A. Well, that was the day after the wreck.

Q. At what time of day? A. Something around —let's see—it must have been something around that time when he was talking about the speed, I think. The speed the next day was the start of the conversation.

Q. Did you have any conversation with him or hear him say anything at any other time? A. He

3106 was speaking publicly and when he insulted us then I rose up and answered.

Q. Was there any conversation that you heard at any time when the captain of the *Grecian* was present? A. No, not when the captain of the *Grecian* was present.

CROSS-EXAMINED BY MR. JONES:

Q. Is this your handwriting (handing witness letter)? A. Yes, sir, that is my handwriting, yes, sir—Excuse me; could I take a look at it?

Mr. Jones: I have just asked you if that is your
3107 handwriting? A. That is my handwriting.

The letter shown witness is marked "Petitioner's Exhibit 21 for Identification" of this date.

Q. You haven't got a very good opinion of French courts of justice, have you? A. No, sir.

Q. What is your opinion of courts of justice generally? A. My opinion of the courts of justice are very good, but in France I could see that they were favoring the Compagnie Transatlantique all the time. My opinion is very good——

Q. That is your judgment of men in occupying high public positions in the judiciary of France; is
3108 that your opinion? A. In France, yes, sir.

Q. That is your judgment of the French courts with respect to controversies between Frenchmen and the Compagnie Transatlantique? A. Yes, that is my opinion of the French.

Q. What is your opinion of courts of justice generally?

Mr. Benedict: You asked him that.

Mr. Jones: I will ask him again.

Objected to as already answered.

A. My opinion is very square. 3109

Q. If it should happen that the courts here should render a judgment in favor of the company you would think that they were governed by motives of integrity, would you? A. If the American court would give a judgment I would say that it is all right.

Q. How about the English courts? A. English court I don't know nothing about it, sir.

Q. Have you any opinion of German courts? A. Neither.

Q. How long have you lived in France? A. I lived in France till I was seventeen years old, and I went back about—I should say I went back about 3110 seven or eight times.

Q. How long did you stay on those visits? A. Well, sometime I did stay one month, sometimes I did stay two months, sometimes three months. I got my father and mother in France.

Q. Now, when did you get your impression of the lack of integrity of the French courts on those visits? A. My impression was in Havre when we were examined by the Cour d'Instruction. The Cour d'Instruction says——

Q. Never mind; answer my question; I will come to that. You did appear before the Cour d'Instruction at Havre? A. Yes.

Q. Did you make any complaint before him 3111 against Mr. Laisné or any one? A. Yes, sir, Mr. Laisné was present too.

Q. Did you make any complaint against them? A. I told the fact—we were called to Havre by the French government to tell the fact and I told exactly how everything had happened and Mr. Laisné was present.

Q. Did you make any charge of fault or neglect against Mr. Laisné before the Cour d'Instruction? A. I told to Mr. Laisné exactly the same thing that

3112 I have just been saying now, the fight I had had with him on board of the *Grecian*.

Q. Didn't you say to the Cour d'Instruction in Havre that you had no fault whatever to find with the sailors of the *Bourgogne?* A. Me?

Q. Yes. A. No, sir, never.

Q. You deny that? A. I accused them most severely.

Q. What would you say of the judgment of the English judge who tried this case. If it should happen that he attributed the loss of life to the fact that the lifeboats on the starboard side were demolished, and the result of the collision being
3113 such as to cause the *Bourgogne* to take a heavy list to starboard, thus preventing the lowering of the lifeboats on the port side, would you say that the judge was acting with integrity or not—deciding with integrity or not?

Objected to as immaterial and incompetent.

The Witness: Excuse me; will you please say that over again?

Q. (Repeated.) What would you say of the judgment of the English judge who tried this case. If it should happen that he attributed the loss of life to the fact that the lifeboats on the starboard side
3114 were demolished and the result of the collision being such as to cause the *Bourgogne* to take a heavy list to starboard, thus preventing the lowering of the lifeboats on the port side, would you say that that judge was acting with integrity or not—deciding with integrity or not? A. I would reserve my opinion.

Q. Now, just think over that for a moment or two and after you have taken that opinion under advisement tell us what you would think of that judge if that were his finding?

Objected to as immaterial and incompetent.

A. As I said, I would reserve my opinion; but 3115
my opinion is another boat would have been launched—the one on the starboard side—if everybody would have done his duty, all the boats except the one which they say has been smashed by the collision—I don't know nothing about the English judge.

Proctor for the claimants gives notice to the proctor for the petitioner that he shall object to the admission of the letter which has been marked for identification unless it is now offered in order that the witness may be asked about it.

Counsel for the petitioner had no objection 3116
to offering the letter in evidence.

The letter is marked in evidence "Petitioner's Exhibit No. 21, October, 1901."

Mr. Jones: I would like to have that translated.

Mr. Benedict: All right. I will ask him a question.

Mr. Jones: I want it translated first.

Mr. Benedict: I haven't the slightest objection.

The letter translated by the interpreter reads as follows:

"PHILADELPHIA, Sunday, 1900. 3117

TO THE DIRECTOR OF THE TRANSATLANTIQUE COMPAGNIE.

I have just read in the newspapers the decision rendered by a French tribunal against a poor woman who has lost her husband in the wreck of the *Bourgogne* and remains a widow and the only support of two little children. It is simply iniquitous, monstrous, abominable. As a matter of fact that smells of ("le pot de vin") bribery, but that

3118 does not astonish me very much on the
of the two famous French justices.
capable of all possible abominations. It
already rendered itself the laughing s
of the entire world. I find it very funny
idea of calling Captain Deloncle a *hero*
see after having lost his ship and 600
fortunate passengers with a calm sea and
hour to sink in and having done absolu
nothing to save the passengers when it w
have been so easy to save everybody if
staff had done its duty.

There is absolutely none but a Fr
3119 tribunal to dare to say such stupidities
sir, between us, Captain Deloncle wa
famous incapable and his crew was comp
of pirates. Finally, sir, since the Fr
court finds that Captain Deloncle is a
why not raise a statue to him and it coul
written upon its base To the memory of b
Captain Deloncle who, for the purpos
touching a premium for speed and mal
an economy in coal amounting to a few
dred francs, has caused to perish through
fault 600 unfortunate passengers.

I have the honor of saluting you, on
the survivors of the *Bourgogne*.

3120 CHARLES LIBRE,
Chef of the Strafford Hotel, Philadelphia

The Witness: That's me.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. When was that letter written; there is no
on it? A. Well, that was written,—let's see—
be about—well, after that judgment was rende
in France about Mme. Ramar, may be about a
after the wreck of the *La Bourgogne*. I coul

say exactly. If I didn't put the date it is my fault, 3121
it is a neglect.

Q. You have said that you thought that the French courts were unfair? A. Yes, sir.

Q. By reason of what occurred at Havre? A. Yes, sir.

Q. What was it that made you think——? A. Well, the Cour d'Instruction tried to smooth everything I was saying; "Well, can't you fix that between yourself; it is no use to leave it go any further," and I could see the way they was questioning me that he was entirely against me, and Mr. Laisné was there too and Mr. Laisné said to me, "Well, he said, I am married and all that—"why don't you 3122
drop the matter" and all that—and I could see that all they wanted was to speak no more about it because— that would have been fair and square after such a terrible wreck—it would have been different what it has been.

RECROSS-EXAMINATION BY MR. JONES:

Q. Did you see Mr. DeBris before the Cour d'Instruction, this gentleman here present (indicating)? A. This gentleman (indicating)?

Q. Yes. A. I don't recollect having seen him on the *Bourgogne*. (To Mr. DeBris.) You were electrician on board the *Bourgogne?* I don't remem- 3123
ber seeing him before the Cour d'Instruction. Of course, it is three years ago, but I remember I see him on board of the *Grecian,* but I never had no quarrel with the gentleman. I guess I remember your name too——

Q. You brought suit against the company in Philadelphia, didn't you? A. No, not positively; I had met Mr. Palliser who took my case in hand in Philadelphia.

Q. What was done with your case? Don't you

3124 know what was done with your case? A. Mr. Palliser has got it on hand, I suppose he is taking——

Q. Who is Mr. Palliser? A. You know, one of the lawyers in William Street—I could say we could get his address in the directory.

Q. Did you sign any papers? A. Yes. Well, he has got my case in hand. Of course, I leave it to him. It is in William Street; I think it is 120——

By Mr. Benedict:

Q. In New York? A. Yes. Palliser.

By Mr. Jones:

3125 Q. Do you know if he has filed any claim in this proceeding? A. He said he would attend to the whole business. Really, I have my work to attend to and I can't neglect it; the whole matter I leave it to him; he said he would take care of my interest.

By Mr. Benedict:

Q. You wrote in this letter that Captain Deloncle, in order to obtain a premium for speed and an economy of coal amounting to some hundred francs, made the 600 unhappy passengers perish. On what do you found that statement about Captain Deloncle receiving a premium for speed? A.
3126 It was right in the French paper and I got some of the French paper home yet.

Q. It was written? What was it that you heard in the French paper? A. It says in the French paper the Compagnie Transatlantique is to give a premium if they made the course between New York and Havre in so many days, you know. Well, they had a kind of a prize, they had so much money that paper says, on saving the coal on the boat, and that is the reason I suppose our captain took the north course, you know, shortening it may or six hours.

NEW YORK, December 30, 1901. 3127

TESTIMONY taken out of court, on behalf of the respondents, at the office of Messrs. Benedict & Benedict, No. 68 Wall Street, New York.

Present—Messrs. BENEDICT & BENEDICT, Mr. MURRAY, Mr. JONES.

JAMES W. BURRAS, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

3128

Q. What is your business? A. Salesman and buyer in flowers and feathers.

Q. Do you live in New York? A. I live in New York, yes.

Q. How long have you lived here? A. All my lifetime.

Q. Have you been in the habit of crossing the ocean? A. Yes, sir.

Q. Have you ever crossed on the French Line? A. Many times.

Q. Do you remember what steamers of the company you have crossed on? A. The *Normandie, La Bourgogne, La Bretagne, La Champagne, Gascogne,* 3129 and that is all I think of.

Q. During how many years have you been crossing? A. 16 or 18 years.

Q. How frequently in the course of a year? A. Usually twice a year.

Q. You mean over and back, or going over twice? A. Going over twice.

Q. Have you ever, on any of those crossings, on the steamers of the company, seen a boat drill? A. Never.

3130 Q. Have you ever on those voyages had occasions of fog? A. Many times.

Q. What, if anything, have you noticed with reference to the speed, or any change of speed of the steamers during periods of fog? A. I never noticed any change of any kind, either by report or my own observation.

Q. Did you, on those voyages, see the runs of the vessels on the different days posted up? A. Yes, sir.

Q. Were those runs diminished by a period of fog? A. They didn't seem to be.

Q. How about the arrival at the port of destination? A. Usually about on time, with the exception of some head winds or a storm, or something to delay them; they usually come in about on time. I have been on the *Bourgogne* when she was two days late—no, it was not the *Bourgogne;* it was the *Gascogne,* I have forgotten how long ago it was.

3131

Q. What was the cause of that? A. I think it was reported losing her rudder, or one of the blades from the propeller.

Q. What attention, if any, did you pay to the question of speed in a fog? A. Being interested in the pool; usually I would look it up.

Q. Do you remember what course the steamers of the French Line usually took going over? A. Reported as taking the most northerly course of any line crossing the Atlantic.

3132

Mr. Jones moves to strike out the witness' answer as regards what was reported.

Q. Have you noticed that they did so? A. Yes.

Q. How did you notice that they did so? A. From the chart in the cabin.

Q. Were you on board the *Normandie* at one time when there was necessity to launch a boat? A. No, sir.

Petitioner's counsel declines to cross-exam- 3133
ine this witness and moves to strike out the whole of his deposition, as immaterial and irrelevant.

Q. Let me ask you one question more, which I have forgotten. How lately have you crossed on the French Line? A. I think five or six years; I wouldn't cross on it again.

Q. Up till that time you crossed frequently? A. Quite frequently—or eight years ago.

CROSS-EXAMINED BY MR. JONES:

Q. What did you mean to say in answer to the 3134
question in regard to the time? A. You ask me the question again.

Q. How long has it been since you crossed on the French Line? A. I said six years; possibly it may have been eight or nine; I don't really recollect.

Q. You have stated that since that time you wouldn't cross on the French Line? A. Yes; I will tell you the reason why.

Q. What is the reason why? A. Because during a going into the port of Havre some years ago we nearly ran down a fishing vessel, or a vessel with a lot of women and children in it, and the officers of the vessel were simply dumbfounded and in a 3135
fright, and they didn't know how to move, and during that time the people on this boat were excited, thinking they would run these people down; the officers and crew were too excited to know what they were doing.

Q. You evidently don't like the French Line? A. I do, as far as the people are concerned—no, I don't like it and wouldn't cross on it.

Petitioner's counsel makes the same motion with respect to the additional questions and

3136 answers of this witness, to strike out the whole deposition as immaterial and irrelevant.

By Mr. Benedict:

Q. Was this occasion in fog? A. No.

GEORGE W. WILMURT, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. What is your business? A. At present it is assistant inspector of steam vessels for the Government.

3137 Q. How long have you been such assistant inspector? A. Well, I commenced in 1879, and retired four years, so it is somewhere about eighteen or nineteen years.

Q. So that you have been there continuously for the last how many years? A. I have been there since 1879 up to the present time, excepting for not quite four years.

Q. When were those four years? A. That I don't recollect now.

Q. Have you been there for the last ten years? A. Oh, yes.

Q. That is sufficient for this case. Did you in-

3138 spect the steamer *La Bourgogne* in the year 1898? A. Yes, according to the records that have been on file, and my name is attached to it, and qualified before a notary public, I was the inspector.

Mr. Jones objects to this witness testifying to the record without its production.

Q. Have you brought down with you that record? A. Yes, sir.

Q. Will you produce it, please?

Record produced by the witness.

Q. In whose handwriting is it filled out? A. That 3139
is not my handwriting; that is the name of the ship and her nationality; that is not mine.

Q. All the rest on that page is yours? A. All the rest is mine. The next two pages are all mine, and the next is mine, except the words "27 feet Superintendent Japhet." The next page is all mine except the "5670 required."

Q. Do you know whose handwriting that is in? A. I should judge from what I know of it, I should judge it was Captain Petrie's.

Q. Go on and state if there is any other? A. The affidavit of Mr. Bocande is not in my handwriting; that is all there is in the book. 3140

Q. (Handing witness little book.) Is that a copy of the document which you have just produced? A. I would have to have it all called off.

Q. You and I called it off the other day? A. Yes, we did, and we found it correct.

Mr. Benedict: I propose to offer the original with the agreement that a copy be substituted.

By Mr. Jones:

Q. Has this record been in your possession ever since the trial? A. No, sir.

Q. In whose possession has it been? A. It has 3141
been in the office that files those records all away, with the clerk. It has not been in my possession since I inspected the vessel, until yesterday, when the counselor called there, and then it was produced to me.

By Mr. Benedict:

Q. You mean Saturday? A. I mean Saturday; that is the first I have had since the inspection.

3142 By Mr. Jones:

Q. Did you bring it here to-day? A. Yes.

Q. Is this paper, purporting to be a copy of one that was made by you? A. Yes, sir.

Q. And is it written in your handwriting? A. No, that is not my handwriting.

Q. Whose handwriting is it? A. That is the clerk's in the office.

Q. Did you compare it with Mr. Benedict? A. Yes, sir.

Q. How did you compare it, did you read it off, or he? A. The clerk read it off and we both examined the original and pronounced it correct with
3143 the original. The counselor and the clerk and me.

It is agreed that the copy may be substituted for the original, with the right to make a comparison.

The copy is marked Respondent's Exhibit A of this date. (Page .)

By Mr. Benedict:

Q. On the page that is headed "Boats" did you measure the boats on the *Bourgogne?* A. Yes, sir.

Q. Are those measurements which you made entered correctly on the page which I show you,
3144 headed "Boats"? A. They are, to the best of my knowledge; it is a long while since it was done; we figured it, which tallied with the counselor on Saturday.

Q. What is meant by those three letters under the word "Boats," "L," "B" and "D"? A. The length, breadth and depth feet.

Q. Under the letter "L" what is entered with reference to each boat; is that the length of the boat? A. That is the length of the boat, yes, sir.

Q. And under the letter "D"? A. The depth of of each boat.

Q. How did you arrive at the figures in the col- 3145
each boat.

Q. Is it entered in feet and inches? A. Yes, sir.

Q. How did you arrive at the figures in the column headed "Feet"? A. By putting the length, breadth and depth all into inches and dividing by 1728, which is a cubic foot; then, under the quotient, using the factor of 6 that is to check off—in the first place we get it in a square, and then that factor of 6 takes off the corners different from the square.

Q. That 6 is 6/10 is it not? A. Yes.

Q. So that you multiply the length, breadth and depth and then multiply that product by 6/10, and 3146
that gives you the number of feet for each boat? A. Yes, sir.

Q. Was that calculation made in each case, and are those figures correct? A. Yes, sir; they must have been correct, or they would not have been passed when it was turned in, as these are all gone over after we turn them in.

Q. Now you go under "Feet" of the same page, "4 rafts with dimensions good for 30 persons each." How do you arrive at that? A. There are two cylinders, and we take the diameter of the cylinders, and then multiply that by the length of the raft and then, dividing by three, three cubic feet for a 3147
person, we come at the number that the raft is good for; the area is taken of the two cylinders, and then the length is multiplied by that area and divided by three.

Q. And according to that calculation those rafts were each of them able to carry thirty persons? A. Yes, sir; there are two cones to the cylinder, and we dispensed then with one, which made the raft in less length than I have it there; they got a trifle over thirty each, but if they don't go a full person we don't grant it.

3148 Q. How many boats did you find that there was on board of her? A. Twelve boats.

Q. How many of those were lifeboats? A. Ten.

Q. Can you tell by looking at these dimensions which of the boats by number were the boats that were not lifeboats? A. No, I can't do that, because I made no remark of it; it is generally the two smallest boats; they have two working boats, and it is very seldom that they are lifeboats; but she is over-boated by throwing any two boats out of the whole number according to law.

Q. What do you mean by "over-boated"? A. She was required 5,670 cubic feet of boat, and rafts; she
3149 has got 6,604 and 4/10.

Q. When you say that she was required to have that you mean by this table under the 12th Section of Rule 3, do you not?

Objected to as leading.

A. That is the table I think, yes, sir; according to the tonnage.

Q. Do you know of any other rule that you had in mind with reference to the boat capacity than that section 12 of Rule 3? A. I don't call any to mind just at present.

CROSS-EXAMINED BY MR. JONES:

3150

Q. You say you inspected this steamer, *La Bourgogne?* A. Yes, sir.

Q. Did you find that she had all the lifeboats and life rafts and life-saving appliances necessary under that law?

Objected to as not stating what the law is.

A. Yes, more; she was over-boated, and she was over-stocked with life—you see there 1,236 life belts covered the class that she was classed for,

with passengers and crew; she had 1,340; so she 3151
was over.

Q. So she had more life preservers than the law required? A. Yes; the law required 1,236 and she had 1,340.

Q. You couldn't have passed and certified that the *Bourgogne* was properly equipped with lifeboats and life preservers if the law had not been satisfied, would you?

Objected to that it doesn't appear that he did pass her.

A. No, sir, I am subject to dismissal and fine, both, and imprisonment if I do; and then I have to 3152
qualify before a notary public when I return my report in.

Q. Who acts upon your report as inspector? A. The local inspector; Captain Petrie.

Q. Do you know whether, upon your report, Captain Petrie passed the *Bourgogne* and certified to her having satisfied the law with respect to lifeboats, life preservers and other appliances for saving life.

Objected to as leading and that the certificate is the best evidence, and as immaterial also.

A. I only know there was no remark made on my 3153
return of inspection, and the ship was classed and got her certificate; but it was not necessary to notify me, unless it was wrong, unless my report was wrong.

Q. Do you know whether your report was acted upon and affirmed by the local inspector?

Objected to as immaterial.

A. My report must have been considered correct or she would not have been passed with her papers.

3154 Q. And she would not have been permitted to leave port, would she?

Objected to, and Mr. Jones moves to strike out the question, as a conclusion of law.

A. No, sir.

Q. What was the general condition of *La Bourgogne* as to seaworthiness when you inspected her?

Objected to as immaterial.

A. My report says that the previous inspection, which was a year before, "only ordinary repairs," to clean the ship up and paint, etc; and I see here
3155 "the hull seaworthy and safe for business assigned"; that is, as an ocean passenger.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. When did you make this inspection? A. The date is in the book.

Q. Look at the date and give it to me. A. (Examines book.) March the 26th, 1898.

Q. Did you have anything to do with inspecting her after that date? A. Not that I recollect; I think not.

Q. I will ask you again as to what you have had reference to when you speak of the amount of boats
3156 that the *Bourgogne* was required to have; what do you refer to? A. I refer to a table that I have in my pocket.

Q. Let me see it. A. There is so much that we have to do that we can't recollect without making memorandum.

Witness produces book.

(Answer continued.) There; now you see there.

Q. This is the table, is it? A. Yes, that is the table, now you take her tonnage——

Q. Her tonnage is 7,500, and the number of boats

as per tonnage is how much? A. 5,670 covers her. 3157

Q. And that is what you meant when you said that she was over-boated; you meant that she had more than 5,670 feet of boats? A. Yes, sir; in my inspection of what I gave her credit for.

Q. That list that you have in your book is the same as the one that is attached to Rule 3, is it not, which I read you? A. I think it is; "boats as per tonnage."

Q. It is the same table as that? A. Yes; from 200 tons down.

Adjourned to 2.30 P. M., at which time adjourned to to-morrow, December 31st, at 10.30 A. M. 3158

JOSEPH L. GILBERT, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. What is your business? A. Marine superintendent.

Q. What experience have you had as marine superintendent? A. I have been chief engineer for twelve years and was assistant engineer for seven years before that; I have been then about nineteen 3159 years engineer.

Q. In what employment are you? A. Southern Pacific Company at present.

Q. How long have you been in their employ? A. Fourteen years.

Q. What vessel are you on now? A. The steamship *Elmar*.

Q. Are you familiar with the construction of marine engines? A. Yes, sir, I think I am.

Q. On a well-constructed marine engine at what

3160 pressure is the safety valve set to blow off? A. What they call the working pressure.

Q. How does that compare with the pressure that is allowed to be carried by the boiler? A. They usually carry it right up to the working pressure, but ten pounds less is the usual pressure carried; that is the average pressure.

Q. Take this case: an engine the maximum on whose boilers is 11 kilos and a half; supposing she is running at a less pressure than that and the engine is stopped; would that have the effect to make the safety valve blow off?

3161 Objected to as leading, that the witness hasn't qualified as an expert and that the question is immaterial and irrelevant.

A. No, it wouldn't.

Q. Supposing in that case, after the engine had been stopped the engine were started again before the pressure on the boilers reached the maximum; would the safety valve blow off in the meantime?

Same objection.

A. No, sir.

Q. If, in such a case the actual pressure on the boilers being somewhat less than the maximum, and the engine is stopped, and after an interval started
3162 again, would it be possible for anyone from those facts to know at how many turns the engine was running before it was stopped?

Same objection.

A. No, sir, that I couldn't tell.

Q. Are you familiar with triple expansion marine engines? A. Yes, sir.

Q. What kind of an engine is the engine of the *Elmar?* A. Triple expansion.

Q. Were you on the *Yankee* in the Spanish-Amer-

ican war? A. Yes, sir, chief engineer from the 3163
first of April to about the first of October.

No cross-examination.

JAMES R. RAYMOND, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. What is your business? A. I am at present manager of the Standard Automatic Releasing Hook Company.

Q. What is that releasing hook that you speak of? A. It is a device for releasing boats in a sea- 3164
way, automatic in its action.

Q. How long have you been familiar with that apparatus? A. Since 1890.

Q. Have you any knowledge with reference to the apparatus for disengaging boats on the steamers of the French Line? A. Yes, sir, I have seen one of the ships.

Q. And examined the apparatus? A. Yes, sir.

By Mr. Jones:

Q. What ship? A. The *Champagne*.

By Mr. Benedict: 3165

Q. Section 4488 of the Revised Statutes provides that ocean vessels

> "shall have the lifeboats required by law, "provided with suitable boat-disengaging ap- "paratus, so arranged as to allow such boats "to be safely launched while such vessels are "under speed or otherwise, and so as to allow "such disengaging apparatus to be operated "by one person, disengaging both ends of the

3166 "boat simultaneously from the tackles by "which it may be lowered to the water."

Did those boats that you have seen on the French Line answer to the description that I have just read?

(Objected to as leading, as indefinite and vague, and as not affording any proof as to the boat-lowering apparatus on the *Bourgogne*, and as immaterial and irrelevant.

A. No.

Q. Could the boats, as you saw them, be disengaged, both ends of them, from the tackles simul-
3167 taneously?

Same objection.

A. No, sir.

Q. What do you say as to the possibility of launching the boats with that apparatus which you saw, when the vessels were under speed? A. It would be a very perilous thing to do; it might be done, but it would be a remarkable thing to do; an impossibility in my opinion.

Answer is objected to as vague and indefinite because the witness is not shown to be competent to answer the question; and also as immaterial and irrelevant.
3168

Q. With reference to the apparatus that you have spoken of, the Standard Automatic Releasing Hook, if the boats had been fixed with that apparatus what do you say as to whether that disengaging apparatus could be operated by one person?

Same objection.

A. Yes.

Q. What do you say as to whether with that apparatus both ends of the boat could be disengaged simultaneously from the chocks? A. The falls are so

rove that when one end detaches the other end de- 3169
taches, irrespective of which end strikes the water first.

Same objection to question and answer.

Q. What do you say as to whether boats arranged with that apparatus can be safely launched while the vessels are under speed, or not?

Same objection.

A. Yes, sir, it has been done frequently; I have seen it.

Q. Will you please to describe this apparatus that you have spoken of, the hook?

3170

Objected to as immaterial and irrelevant.

A. The hook is joined together by a link; the bill of the hook is weighted; it won't stay up unless there is a weight on it. When the boat becomes water-borne the bill of the hook drops and the hook disengages from the ring, or shackle in the boat. The falls are so rove that one end of the boat detaching will detach the other end.

Q. How extensively is this apparatus in use?

Same objection, and as vague and indefinite.

A. It is in use in the United States Navy and all the marine branches of the Government and in quite 3171
a number of coastwise vessels and sailing vessels and yachts, and boats of that kind.

Q. Is it in use by any of the transatlantic lines?
A. No, sir.

Q. How long has it been in use as you have said?
A. Since about 1892.

CROSS-EXAMINED BY MR. JONES:

Q. This Standard Automatic Releasing Hook, of which you speak, is the subject of a patent, isn't it? A. Yes, sir.

3172 Q. Who was the inventor? A. The inventor was James L. Cathcart, of Washington, D. C.

Q. Do you know the date of the patent? A. It was I think March, 1888; I am not sure as to that.

Q. Do you know the number of the patents? A. No, sir; I have it but I haven't got it here; I can't call it to mind.

Q. How long have you been manager of this Standard Automatic Releasing Hook Company? A. Well, about—I can't just call to mind, about five or six or may be seven years.

Q. Was the company formed before you became manager? A. No; I was made manager when the
3173 company was formed; the hook was in existence some little time before there was a company formed to operate it.

Q. At what date was that company formed? A. I don't know; I will have to look that up.

Q. Is it a New York corporation? A. Yes, sir.

Q. When was this hook adopted by the United States Navy? A. About 1894; it was not adopted, I don't know as the United States Navy adopts anything; they have used it since about 1894.

Q. Do you know on what ships they have used it? A. They used it on the United States Gunboat *Annapolis;* in fact, almost all the ships recently constructed and some of the old ones.

3174 Q. Are you prepared to say that it was adopted on the *Annapolis* as early as 1894?

Objected to as the witness has said that he didn't know that it was adopted.

Q. Adopted, or used, on the *Annapolis* as early as 1894? A. No, it wasn't on it at that time, because she wasn't constructed at that time.

Q. On what ships of the United States Navy in 1894 was this used? A. My memory isn't good on that; I would have to look that up.

Q. I wish you would look it up; it is an important matter. A. I will do so. 3175

Q. Are you prepared to say that it is used on all ships of the navy? A. No, sir, not all of them; the Bureau of Construction and Repairs three years ago issued an order that all ships that came to the Navy Yard in Brooklyn and Portsmouth, New Hampshire, and Norfolk, that had any repairs to be done to their lifeboats, the device that was in operation should be taken out and this device put in. Now, it would be impossible for me to get the number of ships from memory, and in fact anyhow I have got the orders, and they don't specify what ships they were for; I sent so many sets of the device to the navy yards. 3176

Q. Have you got a copy of that order? A. No, sir, I have not, and I don't know as there is a copy in existence; I have got orders of the hooks that were sent.

Q. I wish you would look up and furnish me a statement of the names of all vessels of the United States Navy for which you have furnished those hooks? A. I will try to do so.

Q. That order, if I understand you, only related to the Portsmouth, Brooklyn and Norfolk navy yards? A. No, I have got orders to almost all the navy yards on that; but that is where the ships are principally overhauled. 3177

Q. Are you prepared to say that a similar order has been given to the League Island Navy Yard at Philadelphia and the Mare Island Navy Yard in San Francisco? A. I am not, sir; I am prepared to say that I sent hooks there.

Q. When? A. I will have to look that up.

Q. The fact is, is it not that this use by the navy has been one that you have sought to have them make in the process of introducing this hook into general use? A. Yes, sir; after testing and reports have been received.

3178 Q. And you disclaim the term "adoption"; it is an experimental use, is it not? A. I don't know as to that; we have put it on a number of ships, and it seems to me that it is in general us-

Q. Have you ever seen it on any of the ships? A. Oh, yes.

Q. On what regular liners, coastwise or transatlantic, is this used? A. On the Old Dominion ships; on the Panama Line; on the Savannah Line; on the Goodrich Transportation Company, and a number of single ships; in fact, the number of orders—when I get all the orders they are from blockmakers and ship chandlers and boat builders, and
3179 they don't furnish me the record of the ships; but just give the orders.

Q. How long has it been used on the Old Dominion Line? A. Since 1895.

Q. You are sure of that, are you? A. I think so; yes.

Q. How long has it been used on the ships of the Panama Railroad Company? A. During this year; I can't give you the month; probably the spring of 1901 I got my first orders.

Q. How long has it been used on the Goodrich Line? A. Some four years.

Q. Are you positive that it has been used as long as four years? A. Yes, sir.
3180 Q. And on the Savannah Line? A. About three years.

Q. Are you sure that it has been used as long as that? A. Yes, sir; I am quite sure.

Q. Can you mention any other lines? A. I can mention the steamer *Miami*, and I can mention the steamer *Adirondack* of the People's Line; well, I can't think of them all; I am too much confused now; it is quite a list.

Q. How long has it been used on the People's Line? A. Two years.

Q. How long has it been used on the steamer 3181
Miami? A. About the same time.

Q. You have made diligent efforts to have it used continuously, haven't you? A. Certainly, sir; I have done so.

Q. And you have been very energetic in that, have you not? A. Why, certainly.

Q. I understood you to say that it hadn't been adopted or used by any of the transatlantic lines? A. No, sir.

Q. You have made great efforts to induce these lines to adopt it? A. No, sir; I never have; I have made no efforts in those lines at all.

Q. Why not? A. I have no patent; no foreign 3182
patent; they don't buy their goods here; they are bought in foreign countries as a general thing.

Q. Do you mean to say that a foreign vessel would not purchase an American patented article? A. I don't know whether they would or not. I have made no efforts.

Q. Why not? A. Because I have no patent in foreign countries.

Q. You think that is a sufficient reason for your making no attempt to have it used, or adopted, by the transatlantic lines? A. Why, I think so; yes.

Q. Do you know if it has been patented abroad? A. I do not, sir.

Q. Do you know of its being used at all abroad? 3183
A. I do not, sir.

Q. What was your business prior to your becoming manager of this company? A. I was at one time a clerk in the Treasury Department in Washington.

Q. Are you an engineer? A. No, sir.

Q. How long were you a clerk in the Treasury Department? A. Till 1874.

Q. What was your business after that? A. I have been in various businesses; I have been some of the time engaged in the oyster business.

3184 Q. What else? A. Well, that is about all since that time.

Q. Did you ever see a lifeboat of any of the ships of the French Line lowered? A. No, sir.

Q. Or manoeuvred in any way? A. No, sir.

Q. What was the occasion of your visit to the *Champagne?* A. I went to see how her boats were rigged.

Q. Why did you make that examination? A. To see how the boats were rigged.

Q. Will you answer my question? Is that the only answer that you can make to the question? Why did you want to see how those boats were
3185 rigged? A. Because I was requested to do so.

Q. By whom? A. By Mr. Benedict.

Q. When did you look at them? A. This morning, sir.

Q. You never saw them before? A. No, sir.

Q. Did you ever see any of the lifeboats of the French Line on any of their steamers in 1898? A. No, sir; nothing more than just passing the dock; I have never been on board to examine them or to see them.

IRA HARRIS, being duly sworn and examined as a witness for the respondents, testifies:

3186 By Mr. Jones:

Q. What is your business? A. My business has been about equally divided between manufacturing and an officer of the United States Navy.

Q. What experience have you as an officer of the United States Navy? A. I am a graduate of the Naval Academy and was a lieutenant commander in the regular service, and afterwards went back through the Spanish-American war with the same rank, that of lieutenant commander.

Q. What vessels were you in command of during 3187
the Spanish-American war? A. I was in command of the repair ship *Vulcan*. I first was in command of the *Scindia* for a short time, and then was in command of the *Vulcan*, except for a short interval, till the war was over. During that interval I was on the Spanish cruiser *Infanta Maria Theresa*.

Q Since the war what have you been doing? A. Immediately after the war I became marine superintendent of the army transport service; during this last year I have held a number of positions; I have been temporarily, or partially, employed by the Standard Automatic Releasing Hook Company. 3188

Q. So that you are familiar with this apparatus that the last witness has spoken of? A. Yes, sir; I adopted that for the Army Transport service as soon as I saw it.

Q. How many vessels was it adopted for in the Army Transport service? A. It was adopted for all that came into this harbor, that came under my charge, and some others; I don't know how many others; perhaps sixteen; I think there were some sixteen ships that we had that used it; but it is still used, and is still put on board all those that require them.

Q. Why did you adopt it? A. I had such experi- 3189
ence, especially that during the wreck of the *Infanta Maria Theresa*, where the *Vulcan* and *Leonidas* were incapable of lowering their boats, that I was very anxious to adopt it; and also because as soon as I saw that it was made on the same principle as a hook which was tested at the Naval Academy when I was a midshipman, and which was used also on that Spanish wreck, the *Infanta Maria Theresa*.

Q. Can you mention other vessels besides those

3190 in the Army Transport service which have used this apparatus that you know?

Objected to as vague and indefinite, and not calling for a statement of any time.

Mr. Benedict: I will bring the time out afterwards.

A. I have seen it on a number of ships, both government vessels and otherwise; it is used on a number of revenue cutters—I think all those that I have ever seen; it is used somewhat in the light-house department; to my knowledge it is used on a good many yachts; for instance, Col. Astor's yacht,
3191 the *Nourmahal*, whose captain was in the transport service; I know he uses it.

Q. Can you mention any other lines? A. No; I think none others except those mentioned before by Captain Raymond; I don't see as there is any need of repeating those.

Q. Have you seen the boat-disengaging apparatus that has been used by the Compagnie Generale Transatlantique? A. If that is the proper way to describe a plain hook and ring, I have.

Q. Have you seen what is actually there? A. I have seen what is there.

Q. What do you say as to whether that apparatus
3192 which they use conforms to this requirement of the statute which I read to you:

"Every vessel shall have the lifeboats re
"quired by law, provided with suitable boat-
"disengaging apparatus, so arranged as to
"allow such boats to be safely launched
"while such vessels are under speed or other-
"wise, and so as to allow such disengaging
"apparatus to be operated by one person,
"disengaging both ends of the boat simul-
"taneously from the tackles by which it may
"be lowered to the water."

Objected to as immaterial and irrelevant, 3193
calling for the conclusion of the witness, and because the witness has not shown qualification to testify as an expert.

A. It does not, for these reasons: It requires two men at least, one at each end, to unhook a plain hook from a ring at the two ends of a boat; it is not an impossibility for two men, well-drilled and cool-headed, to unhook simultaneously rigid hooks when a vessel is under way, provided some one on the ship will see that the painter is kept taut; but it is a feat which is very unlikely to be successfully performed in an emergency. I might also add that when the ring into which these hooks are hooked is 3194
joined to the ship by a chain span it is less likely to be successfully unhooked when the ship is under way than if the ring is at the end of a rod which passes through the keel of the boat, for the reason that with the chain span a man must hold up the ring and stand with one hand, and has only one hand with which to steady the block and enter the bill of the hook.

Q. What do you say as to the possibility of disengaging a boat as required by the statute, if it should be furnished with this Standard hook, of which you have been speaking?

3195

Same objection.

A. I have seen it frequently done.

Q. With how many men? A. I have seen it done without any man, and I have seen it done with one man.

Q. How long has this apparatus of the Standard hook been known here in this port?

Objected to as calling for the conclusion of the witness as to facts not shown to be within his knowledge.

3196 A. I never knew anything about it until the end of the Spanish-American war; but I was not in a position to know about it, being a Western manufacturer.

Q. You haven't quite answered the question now (question read to witness). A. I don't know; because I haven't been around this port prior to the Spanish-American war in such a capacity as to know.

Q. How long have you known it to be in use here? A. Since the end of the Spanish-American war.

Q. Has this hook ever been the subject of ex-
3197 amination and report on behalf of the naval service of the United States, as far as you know?

Objected to as immaterial and irrelevant and as involving subject-matter of written documents, or documents not produced, proved and put in evidence.

A. It has.

Q. When? A. I have seen reports, a number of them; I have had letters——

Q. I am only asking about the time; when? A. I can't remember the dates; but I have had letters from a number of leading officers in the navy, say-
3198 ing that they had tried it, and I have seen reports of it.

Q. How far back can you say that you have had knowledge of such a thing?

Same objection as before.

A. I think that Admiral Farquhar wrote me that he had tried it some six years ago.

Mr. Jones: The answer of the witness is objected to, and petitioner's counsel moves to strike it out, as involving matter contained in a written document, which has not been produced.

The Witness: I would like to add to that answer; 3199
I didn't get through; I know that other releasing hooks have been tried and used in the navy since 1862.

Q. Was there any such kind of a releasing hook in use on the vessels of the French Line that you saw?

Objected to as immaterial and irrelevant, and indefinite and vague, and as not calling for an answer as to matters contemporaneous with the loss of the *Bourgogne*.

A. The vessel, the *Champagne*, has simply a plain hook, checking a ring on a chain span at each end 3200
of the boat.

Q. You don't answer my question (question repeated). A. No.

CROSS-EXAMINED BY MR. JONES:

Q. You said something about being connected with the company operating the device described by the last witness. In what capacity are you engaged there? A. I was engaged——

Q. Was, or are? A. My engagement with them terminates to-day. I was temporarily engaged to give them half my time in increasing the sales of their hooks in certain directions. 3201

Q. When dd you enter that employment? A. I think it is about six months ago, and to last during the rest of the year. I don't remember the first date; but about that time.

Q. Are you going into some other business now? A. I am in some other business, and expect to go into some other business; yes, sir.

Q. And really terminate your relations with this company to-day? A. My contract with them runs out to-day. It might be renewed for a month, or something like that; I can't say as to that.

3202 Q. During the period of your engagement with this company you have been very much interested in introducing it into use? A. Yes, sir.

Q. And quite naturally you think it is an improvement and perhaps a very great improvement over other devices in use? A. I was satisfied of that when I adopted it for the transport service three years ago. I may say further that I consider it the only purely automatic device in existence, and prefer it to those on the British ships or the German ships.

Q. Are you prepared to say that this device was in general use in the summer of 1898? A. My an-
3203 swer must depend upon what you mean by the term "general." I believe it was used on perhaps a hundred ships at that time.

Q. You are an educated man; you know the meaning of the word "general"? A. Yes, sir.

Q. I ask you again whether you think that the fact that this device was used on a hundred ships in the summer of 1898 was a general use by ships? A. No, I should not consider that to be a general use.

Q. Would you consider a steamship company at fault to the point of negligence if, in the summer of 1898, they didn't have this hook in use?

3204 Objected to as a question of law for the Court.

A. No; but if they didn't use some detaching apparatus I should think them criminally negligent.

Q. What detaching apparatus was in general use at that time, coming within the description of "some detaching apparatus," as you have just stated? A. There is an apparatus manufactured by Harland & Wolff, which is in use on many German and English steamships.

Q. Do you know how long that has been in use? A. No, sir.

Q. Is it used on the German and English 3205
steamers coming into this port? A. I have seen it aboard a German, and I know it is in general use among many English transatlantic lines.

Q. Any coming into this port? A. Yes, sir.

Q. What steamers? A. The Atlantic Transport Line use it.

Q. There are other British steamship lines here; can you mention any others? A. No, sir; I have never examined any others, and I only know that from their marine superintendent comparing it with the Standard Automatic Releasing Hook recently; he has shown it to me in use there, and I also noticed it on board the Holland-American ship which 3206
I recently inspected.

Q. Have you inspected, for that purpose, all the ships of the Holland-American Line? A. I haven't inspected any ship for that purpose of any of those lines.

Q. You have made use of the term "inspected"; have you inspected all the ships of the Holland-American Line? A. No, sir; I have only been on board one of them, and that I went over for curiosity.

Q. Have you been on board and inspected all the ships of the Atlantic Transport Line? A. No, sir; I have inspected a number of them, because they 3207
were purchased by the Army Transport service; but my knowledge of that line comes from their marine superintendent, who has made comparisons between those two hooks.

Petitioner's counsel moves to strike out all the answers of this witness relating to what he has been told or informed as to by others.

Q. You said something in your direct examination of this patented device in which you are interested, having been successfully operated by one

3208 man. Have you seen two men engaged in the operration? A. I have seen two men in a boat when it was lowered, and I have seen one man in a boat when it was lowered, and I have seen no man in a boat when it was lowered.

Q. Have you seen a case where two men have been engaged in the operation of releasing these hooks? A. I presume I have, although I can't recall it; it will release without any man.

Q. How long has this other hook, of which you have spoken as having been made by Harland & Wolff, been in use by the steamers to which you refer? A. That I don't know; the wood device
3209 has been in use for a great many years; probably twenty years; the wood detaching apparatus; that is a similar one, but different; both of them are lever devices.

Q. What do you know about the general use of that device; have you seen that on commercial ships? A. No, I never noticed it; I have very little experience in commercial ships; I never sailed in one except as a passenger.

Q. Are you acquainted with the officers and men connected with the office of the supervising inspectors of steam vessels? A. I know Captain Petrie here; I think no one else here, although I
3210 probably would know them by sight; yet I have never had anything to do with any one that is around here except Captain Petrie, who is inspector of hulls. I have a mighty poor memory for names.

Q. Have you had anything to do with any one connected with that department of the government service, other than Captain Petrie, in other places? A. Yes, sir.

Q. Where? A. John D. Sloan is supervising inspector of the fifth district, and he is a friend of mine.

Q. What is the fifth district? A. Its headquar- 3211
ters now is at Dubuque, Iowa.

Q. Have you made any effort to bring this device, in which you have had an interest, to the attention of the steamboat inspectors? A. I cannot say that I have; it has been brought before them many times.

Q. Do you know whether they have insisted upon its adoption?

Objected to as immaterial and incompetent.

A. No, sir; they have not; that or any other device.

Q. What other business are you engaged in? A. I am president of the New York & St. Louis Mining 3212
& Manufacturing Company.

Q. You stated in your direct-examination that your time had been about equally divided between the naval service and manufacturing? A. Yes, sir; rather more manufacturing than naval.

Q. When did you leave the naval service after graduating? A. I should think in 1871.

Q. When did you graduate? A. I graduated in May, 1863.

Q. What was your grade when you left the navy? A. Lieutenant commander.

Q. Do I understand that you didn't return to New York until the late war with Spain? A. Yes, 3213
sir; I was for some years in ship-building; between six and seven years, with the American Steel Barge Company; but I wasn't at sea in their employ, nor was I except temporarily with the transport service.

Q. What kind of vessels did they build? A. They built steamers and tow barges, a great many.

Q. Did they provide them with lifeboats? A. Yes, sir.

Q. Did those lifeboats use the hooks in which you are interested? A. No, sir; I never saw that hook, as I said, till after the Spanish-American war.

3214 Q. Were those boats constructed by that company provided with any hook for lowering lifeboats?

Objected to as immaterial.

A. No, sir.

Adjourned till three P. M.

Met pursuant to adjournment, at three P. M., with the same appearances as heretofore stated.

JOHN W. E. YORK, being duly sworn and exam-
3215 ined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. Are you connected with the office of the Clerk of the District Court of the United States in this district? A. I am the clerk in the employ of the United States District Court in this district.

Q. Have you here the records and files of that court in the case of Boetjer *vs.* The Compagnie Generale Transatlantique? A. I have; yes, sir.

Q. Will you see if you find a bill of lading in among those files? A. The libel was filed on the 28th of March, 1893; I produce the bill of lading
3216 referred to, which is dated March 7, 1892. It was an exhibit in that suit.

CROSS-EXAMINED BY MR. JONES:

Q. How do you know that this is an exhibit in that suit? A. Simply from the files in our office.

Q. That is all the knowledge you have on it? A. That is all the knowledge I have on it.

Q. It is not marked anything? A. It is apparently an exhibit in the case referred to.

Q. Are you able to swear that it was used in evi-

dence in that case? A. I know nothing further 3217
than it is among the files in our office.

Q. You observe that it is not marked as an exhibit? A. I haven't looked at it before, but as long as you say so I don't find any marks on it; it is one of the files in our office.

Q. How do you know? A. Because I took it from the files myself this afternoon.

Q. When did you examine the files? A. The first time I examined those files was about two or three weeks ago when Mr. Benedict called for the papers in the case.

Q. You have no knowledge that this was a paper filed at the time of the suit, have you? A. I have 3218
no knowledge whatever, except that I found it among the files in our office.

Q. In what language is the printing of the bill of lading? A. I haven't read it before; I will look at it now; the language is French.

Q. And it purports to be a bill of lading from Havre to New York, does it? A. I haven't sufficient knowledge of the French language to say what it purports to be.

Q. Will you read the second line of this paper, and say whether it purports to be a bill of lading from Havre to New York? It is plainly printed there. A. So far as my knowledge of French is 3219
concerned I say yes.

Q. But you have no knowledge whatever that it was an exhibit in the case, have you? A. I have no further information to give in answer to the question put to me.

Q. Well, you will answer my question? A. Nothing further than is afforded by the files in the office.

Q. And you never heard of or saw the paper until Mr. Benedict a few weeks ago asked you to look

3220 through the files? A. No, I never saw it before that.

Q. Did you give Mr. Benedict the file before you examined the papers? A. No, sir; Mr. Benedict called at the office and stated the title of the case, and directed me to find the files in that case, and I did so, from the files in the office.

Q. What did you do with the file when you found it? A. I handed it to Mr. Benedict for his examination.

Q. When was it that your attention was called to this bill of lading? A. Only at the time when Mr. Benedict examined those files.

3221 Q. After he had examined them? A. Yes, sir.

Q. Did the examination take place in your presence? A. Yes.

Q. Didn't you leave the papers in the hands of Mr. Benedict and attend to some other affairs? A. No, sir; Mr. Benedict's examination of the files was very brief; we were in Room 61, where the papers are filed, and he looked at them in my presence, and handed them back to me, and I put them back in their place.

Q. What is the practice in the office with reference to files of papers; are they handed to attorneys and others for examination? A. Always, to members of the bar of that court.

3222 Q. They are always afforded free access to them at all times? A. Certainly.

Examination suspended for the present.

ROBERT HUNTER, being duly sworn and examined 3223
as a witness for the respondents, testifies:

By Mr. Benedict:

Q. Are you connected with the Custom House? A. Yes, sir.

Q. Have you charge of files in the Custom House? A. Not particularly; no, sir.

Q. Have you charge of files of bills of lading? A. No.

Q. Have you produced a bill of lading here? A. I have.

Q. You had charge of that, had you? A. Well, I had access to the files and can get them when they 3224
are called for.

Q. And this bill of lading you produce from the files of the Custom House? A. From the files of the Custom House; yes.

Q. You were subpœnaed by us to have it here? A. Yes, sir.

Q. A collector was subpœnaed to produce it, and you produce it? A. Yes, sir.

CROSS-EXAMINED BY MR. JONES:

Q. This paper, purporting to be a bill of lading, is issued for transportation from Havre to New York, is it? A. Yes. 3225

Q. And it is in the French language? A. Yes, sir.

Q. What is the date of it? A. The 17th of June, 1898.

Q. Do you know, of your own knowledge, that that is a bill of lading of the Compagnie Generale Transatlantique? A. I do, by the reading of it.

Q. That is what it purports to be, according to the printed matter? A. Yes, sir.

3226 Q. You don't know anything beyond that? A. Nothing; no, sir; only what the paper shows.

Examination suspended for the present.

OSCAR R. CAUCHOIS, being duly sworn and examined as a witness for the respondents, testifies:

By Mr. Benedict:

Q. You are in the employ of the Compagnie Generale Transatlantique? A. I am.

Q. How long have you been in that employ? A. October, 1875.

3227 Q. In what capacity? A. Well, I have been connected with the freight department during the entire time, and am now assistant general agent and manager of the freight department.

Q. Have you been, during that time, familiar with the bills of lading of the company? A. Yes.

Q. You have seen both the bills of lading issued here in New York and those that were issued elsewhere for voyages to New York, have you not? A. Yes.

Q. Will you look at this paper, which I put in your hands, and tell me whether that is the usual form of the company's bills of lading from this port

3228 that are in use at the present time?

Counsel for petitioner objects that the paper referred to is not properly identified.

A. Yes, I think it is.

Q. Now I put in your hands, besides that paper which I have already, the bill of lading spoken of by Mr. York and produced by him, and also the paper that was produced by Mr. Hunter, and ask you to tell me whether those two papers are bills of the company? A. Why, they probably were at the time.

Q. They appear to be on their face, do they not? 3229
A. At the time they probably were the forms.

Q. Now I show you still another paper, bill of lading, which is dated the 27th of September, 1901, and ask you also if you recognize that as the form of the bill of lading of the company? A. Without going into all the reading matter, I should say that that was one of the forms of the company's bill of lading.

Q. Will you look at all those bills of lading, one after the other, and say if they do not all of them contain a clause that "freight prepaid will not be returned, goods lost or not lost"? A. I shall have to read them all to tell that. 3230

Petitioner's counsel objects to the question and asks for the production of the documents, as they are the best evidence of their contents.

A. The phraseology is different in some of the bills of lading.

Q. Will you read the clause in the different bills of lading?

Same objection.

By Mr. Jones:

Q. All these papers are in French, are they not? 3231
A. All except one.

Q. Those that are in French please read in French? A. Very well.

Mr. Benedict: Read the French, certainly.

By Mr. Benedict:

Q. Read the one produced by Mr. York first.

The Witness: "Le fret payé d'avance est acquis "au navire même en cas de sinistre."

Q. Now the one produced by Mr. Hunter?

3232 The Witness: "Les frets payées d'avance sont "acquis au navire même en cas de sinistre."

Q. Now the third French one?

The Witness: "Le fret payé d'avance au payable "à destination est acquis on du que le navire ou "la marchandise arrive à bon port, ou se perde "pendant le voyage."

Q. Now those French clauses that you have read are all equivalent, are they not, to a similar clause in the English bill of lading which I have shown you?

Objected to on the ground that the documents referred to are not produced and the wit-
3233 ness has not testified as an expert in order to properly answer the question.

A. No, not exactly.

Q. Will you read the English clause?

Same objection.

The Witness: "Also the freight prepaid will not "be returned, goods lost or not lost."

Q. You have been familiar with that clause, have you not, in the bill of lading of the company?

Petitioner's counsel objects to the examination of this witness as to the terms and clauses
3234 of a bill of lading not produced, proved and put in evidence, inasmuch as the papers themselves are the best evidence.

A. I have a general idea of some such clause.

Petitioner's counsel calls upon the claimants' counsel to produce the papers about which he is examining this witness.

Claimants' counsel answers that neither one of the counsel wanted them in evidence; whereupon petitioner's counsel says that he does re-

quest the claimants' counsel to offer them in evidence. 3235

Q. How long has that clause been contained in the bills of lading of the company, to your knowledge?

Same objection.

A. I can't answer that; I can't tell how long.

Q. Hasn't it been there for the last ten years? A. I can't say positively.

Q. Hasn't it been there as far back as the earliest date of these bills of lading that have been shown you? A. I can't tell that it existed in all the bills of lading. 3236

Q. Have you ever seen a bill of lading that didn't have that clause in, that you can say? A. I have never looked at the clause, and I am not familiar with the clauses of the bills of lading.

Q. But you can't say that you haven't seen a bill of lading that hadn't that clause in? A. I don't see how I can answer that question.

Q. See if you can say it, if you can say that you have seen one that hadn't got that clause in? A. As for looking for that particular clause I can't say whether I did see a bill of lading with it in or without it in.

Q. Don't you know in your experience as a freight agent and connected with that very agency, that that has been a usual clause in the bills of lading of the company for the last, say, five years? 3237

Same objection.

A. I can't tell you that.

Q. The bill of lading that was produced by the Custom House—is not that a bill of lading of the *Bourgogne* on the last voyage that she arrived here from Havre?

Same objection.

3238 A. I can't swear to that; such bills of lading never came before me at the time; this bill of lading never came before me at the time, and I can't tell. It is very possible a bill of lading may be made up any time.

Q. The voyage on which the *Bourgogne* did come to New York the last time was about the 17th of June, from Havre, was it not? A. Yes, I should say about that time; judging from the time of her sailing from New York.

Petitioner's Counsel: I will agree that the Custom House may make a certified copy of their bill of lading.

3239 Respondent's Counsel: Mr. Hunter, will you have a copy of the bill of lading made and certified to me as a copy?

Mr. Hunter: I will do so.

The copy in the Boetjer case is marked Respondents' Ex. B of this date. (On file in District Court.)

The copy of bill of lading from the Custom House is marked Respondents' Ex. C of this date. (Exhibit in original form accompanies record.)

The English copy of bill of lading is marked Respondents' Ex. D of this date. (Not found

3240 with record on file in this court.)

The third French bill of lading is marked Respondents' Ex. E of this date. (Exhibit in original form accompanies record.)

By Mr. Jones:

Q. Did you state that this paper, marked Respondents' Ex. D of this date, is the bill of lading of the company in use now? A. I don't think I did; my recollection is that I said it looked like a

form of the bill of lading in use at present; I 3241
couldn't swear to it.

Q. You don't know where it came from? A. I haven't the slightest idea.

Q. It didn't come from your office? A. Not to my knowledge.

By Mr. Benedict:

Q. I call your attention to the date on that bill of lading, and ask you whether that is not the form that was in use at that date? A. 10/16/1900. It probably was, about that time; there have been so many changes at various times in these bills of lading that the printers' date in the corner is no abso- 3242
lute record.

Q. The company prints its own bills of lading, does it not? A. Orders them printed; yes.

Q. Have you any doubt that that is one of them? A. I haven't the slightest doubt about that.

By Mr. Jones:

Q. What do you mean by not having the slightest doubt; are you sure that that is one of the company's bills of lading? A. No, I can't swear that it is the bill of lading existing at the time.

Q. Then what you mean is that it appears to be? A. Yes, that is what I meant to say; it appears 3243
to be.

By Mr. Benedict:

Q. You meant to say just what you did say, didn't you, that you hadn't any doubt that that was the bill of lading of the company? A. I qualified that by saying that it appears to be one of the forms issued by the company.

Q. Have you any doubt about it? A. I can't say that I have any doubt about it.

3244 CROSS-EXAMINED BY MR. JONES:

Q. The terms of the bills of lading of the company are constantly changing, are they not? A. Oh, yes; frequent changes are made.

Q. Do you keep in your memory the dates and terms of those various changes? A. No.

Q. Where are those changes decided upon? A. Every change is submitted to the home office in Paris for their approval.

Q. You mean by that such changes as may be made in the bills of lading issued here? A. Yes; I thought you referred to this bill of lading particularly.

3245 Q. And it is the fact, is it not, that it is the Paris office that regulates the terms of contract as embodied in these bills of lading? A. Absolutely.

Q. Does your agency busy itself with bearing in mind dates and terms and conditions in these changes? A. No; we follow orders; that is all.

Q. It is not a rare occurrence, is it, for changes to be made specially in the case of issued blls of lading, to need some special circumstance or contract? A. No.

Q. That is common? A. Quite common.

Q. And then I understand from that that even the printed form in general use would not be evi-
3246 dence of the contract of carriage in any particular case? A. No.

Q. The agency here has nothing whatever to do with the bills of lading that are issued at Havre? A. Not the slightest.

Q. Then, if I understand your testimony, it is that so far as you are concerned here with respect to bills of lading issued from this side, you perform merely the office of suggestion and report, and the company in Paris determines the terms of the contract? A. Not even suggestion; merely submission

to the company, and they determine the terms of the 3247
contract.

Q. State whether or not, without a reference to the Paris office, you could give the particulars of these various changes? A. I could not.

REDIRECT-EXAMINATION BY MR. BENEDICT:

Q. In the course of business here any changes that are suggested in the bills of lading issued here in New York come under your observation, do they not? A. Yes.

Q. Has there ever any such alteration come under your observation as striking out from the form of the bill of lading that clause with reference to pre- 3248
paid freight? A. I don't recollect.

Q. You have no memory of any such thing ever having been submitted to you? A. There have been so many things submitted to the home office for alteration and suggestion that I can't particularize.

Q. But you don't answer my question; please answer my question (question repeated). A. I don't recollect.

Q. That doesn't quite answer; my question is whether you have any memory of any such alteration ever having been submitted to you; please answer yes or no; if you have memory say so? A. I 3249
say I don't recollect whether any such thing was ever brought to my knowledge.

Q. You haven't any memory that it was? A. No.

Mr. Benedict offers in evidence Exhibits D and E.

Mr. Jones: I object to the exhibits as immaterial and irrelevant, and as not sufficiently proved.

It is agreed that a certified copy of Exhibit C may be made by the Custom House, and may

3250 be used in place of the original, subject to the objection above stated; and as to Exhibit B it is agreed that the paper itself may be introduced on the hearing from the files of the court, subject to like objections.

Respondents' counsel asks counsel for petitioners whether he will produce the *fac simile* of the bills of lading which were in use on the last voyage of the *Bourgogne*.

Petitioner's Counsel: I haven't got them.

Mr. Benedict: My question is whether you will produce them.

3251 Mr. Jones: My answer is that not having them in my possession, and not knowing where I can procure them, I am unable to respond to the call.

Mr. Benedict: I give notice that you are required to produce them on the trial, and in failure of that, secondary evidence of the contents will be offered.

Mr. Benedict: Now, with reference to the passage ticket.

Mr. Jones: That is in Mr. de Bocande's possession and he cannot be here on Thursday.

Adjourned subject to further notice.

3252 NEW YORK, January 10, 1902.

Met pursuant to adjournment; counsel being present as heretofore stated.

EUGENE DE BOCANDE, called as a witness on behalf of the respondents, testifies:

By Mr. Benedict:

Q. Have you brought with you the form of the passage ticket of the French Line? A. Yes, sir; I produce it.

Q. Is this the form that was in use at the time of 3253
the disaster to the *Bourgogne?* A. This is the shape of the ticket.

Q. Is it the form in the letters? A. The same exactly, I think.

By Mr. Jones:

Q. You don't mean to say that there have not been changes? A. I don't know.

By Mr. Benedict:

Q. Will you read the first clause of that ticket? A. (Reading) "Passage money is to be paid in full 3254
"before the departure of the steamer, and at all "events belongs to the company."

Q. Do you remember whether that clause which you have read was in the tickets in use at the time when the *Bourgogne* was lost? A. I suppose it was the same.

Q. I understood you to say that the second-class tickets were substantially in the same form? A. The same form and red in color; that is all; third class, green.

Q. Do you know whether there was any difference in reference to the matter of the supply and arrangement of lifeboats between the *Champagne* and the *Bourgogne?* A. In my opinion, no; the 3255
same; our four steamers were alike—the *Champagne, Bretagne, Bourgogne, Gascogne.*

By Mr. Jones:

Q. Do you know anything about any changes in the lifeboats, if any, in the *Bourgogne* after she was repaired in the spring of 1898? A. No; the *Bourgogne* had simply new boilers put on board; that is all.

3256 Mr. Benedict: I read from the edition of 1896 of the Complete Codes published in collaboration, annotated by L. Demay, A. L. Guyot, editor, Sections 1382, 1383 and 1384, of the Code Civil, as follows:

"1382. Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé, à le réparer.

"1383. Cachun est responsable du dommage qu'il a causé non-seulement par son fait, mais encore par sa négligence ou par son imprudence.

"1384. On est responsable non-seulement du dommage que l'on cause par son propre
3257 fait, mais encore de celui qui est causé par le fait des personnes dont on doit répondre, ou des choses que l'on a sous so garde. Le père, et la mere apres le décés du mari, sont responsables du dommage causé par leurs enfants mineurs habitant avec eux;—Les maitres et les commettants, du dommage causé par leurs domestiques et préposés dans les fonctions auxquels ils les ont employés; —Les instituteurs et les artisans, du dommage causé par leurs élèves et apprentis pendant le temps qu'il sont sous leur surveillance. La responsibilité ci-dessus a lieu, à
3258 moins que les pére et mère, instituteurs et artisans ne prouvent qu'ils n'ont pu empêcher le fait qui donne lieu à cette responsabilité."

(Translation.)

Sec. 1382. Every action whatever of man, which causes damage to another, binds him by whose fault it has happened, to repair it.

1383. Every one is responsible for the damage which he has caused, not only by his

act, but also by his negligence or by his im- 3259
prudence.

1384. One is responsible not only for the damage which one causes by one's own act, but furthermore for that which is caused by the act of persons for whom one might answer, or of things which one has under one's control. The father and the mother, after the decease of the husband, are responsible for the damage caused by their minor children dwelling with them; masters and employers for the damage caused by their domestics and employees in the functions for which they have employed them; teachers 3260
and artisans for the damage caused by their pupils and apprentices during the term that they are under their watchfulness. The above responsibility exists unless the father and mother, teachers and artisans prove that they have not been able to prevent the act which gives ground for this responsibility.

Petitioner's counsel objects to this evidence as inadmissible, immaterial, irrelevant, and not sufficiently proved, and moves to strike the same from the record.

It is agreed that if upon comparison the above is found to be the form of the code in 3261
force at the time of the disaster, the objection as to insufficiency of proof will be withdrawn by petitioner's counsel.

Counsel for respondents also reads from Fremont's Code de l'Abordage, edition published at Paris in 1896, Section 206, as follows:

"206. En dehors des reglements diplomatiques qui etablissent les règles de police et de securité internationale, le principe de la liberté de la mer de doit recevoir d'autre exception que celle résultant de la souve-

3262 raineté des Etats à l'égard de leurs navires. En pleine mer, tous les navires de querre ou de commerce sont considérés comme une partie du territoire qui s'est deplacée et que domine toujours la souveraineté de l'Etat dont ils portent le pavillon.

"En conséquence, tout ce qui se passe à bord est réputé accompli sur le territoire national, quels qu'en soient les auteurs et les victimes."

And also Sections 294 and 295 as follows:

"294. Le propriétaire de navire peut être condamné à des dommages-intérèts, non
3263 seulement envers les chargeurs de la cargaison avariée ou perdue par imprudence, mais encore envers les veuves ou les enfants des matelots morts dans le naufrange que a suivi l'abordage. (Poiters, 23 février 1876; S. 76. 2. 214; D. 76. 2. 132.)

"295. Lorsque, dans un abordage survenu la nuit entre deux vapeurs, l'un d'eux a sombré, et que plusieurs passagers sont morts, si la cause de l'abordage peut être attribuée à la faute du capitaine du navire perdue, c'est lui et son armateur qui doivent en supporter la responsabilité. Ces derniers
3264 sont seuls tenus solidairement, envers les chargeurs, de les dédommager de la perte de leur marchardise, sans recours contre l'armateur et le capitaine de l'autre navire. (Aix, 19 novembre 1852; Journal de Jurisprudence de Marseille, t. XXXI, 1.33.)"

Counsel for petitioner makes the same objections and motion.

(Translation.)

Sec. 206. Outside of the diplomatic regulations which establish the rules of police

and international security, the principle of liberty of the sea must receive no other exception than that resulting from the sovereignty of States in regard to their ships. On the high seas all ships of war or of commerce are considered as a part of the territory which has displaced itself, and which is ever dominated by the sovereignty of the State whose flag they carry. 3265

In consequence, everything which occurs on board is considered as done upon the national territory, whoever may be the authors or victims of it.

Sec. 294. The owner of a ship can be condemned in damages, not only as against the shippers of a cargo damaged or lost by imprudence, but furthermore as against the widows or the children of sailors who died in the shipwreck which followed the collision (Poiters February 23 1876; S 76 2 214; D 76 2 132). 3266

Sec. 295. When, in a collision which has occurred at night between two steamers, one of them is sunk, and several passengers are dead, if the cause of the collision can be attributed to the fault of the captain of the ship which is lost, it is he and his owner who must bear the responsibility of it. These last alone are bound conjointly, as against the shippers, to recompense them for the loss of their merchandise, without recourse against the owner and the captain of the other ship. (Aix, November 19, 1852; Journal of Jurisprudence of Marseilles, vol. XXXI, 1, 33.) 3267

Respondents' counsel also reads from the Code de Commerce, edition of 1896, Section 302, as follows:

3268 "302. Il n'est du aunum fret pour les marchaudises perdues par naufrage ou échouement, pillées par des pirates our prises par lesennemies. Le capitaine est tenu de restituer le fret qui lui aura été avancé, s'il n'y a convention contraire."

Counsel for petitioner makes the same objections and motion.

(Translation.)

No freight is due for merchandise lost by wreck or stranding, pillaged by pirates or
3269 taken by enemies. The captain is bound to pay back the freight which shall have been advanced to him, if there is no contrary agreement.

[RESPONDENTS REST.]

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

3270 OF

The petition of LA CAMPAGNIE GENERALE TRANSATLANTIQUE, etc., for limitation of liability.

SIRS:

Please take notice that James A. Dumont, a witness in behalf of the petitioner, who lives at a

greater distance from the place of trial than one 3271
hundred miles, will be examined and his deposition taken *de bene esse*, pursuant to the statute in such cases made and provided, before E. H. Pony, a Notary Republic of the District of Columbia, or other duly authorized officer, at the office of the supervising Inspector General in the Treasury Department Building in the City of Washington, District of Columbia, on the first day of March, 1902, at 10.30 o'clock in the forenoon, and you are hereby notified to be present and put such cross-interrogatories to said witness as you may think fit.

Yours, etc.,

EDWARD K. JONES, 3272
Proctor for Petitioner.

Dated February 28th, 1902.

Messrs. BENEDICT & BENEDICT,
WILLIAM H. BUTTON, Esq.,
A. GORDON MURRAY, Esq.,
HAROLD BINNEY, Esq.,
Messrs. HASTINGS & GLEASON,
Messrs. KENNESON, CRAIN, EMLEY & RUBINO,
G. J. WIEDERNOLD, Esq.,
Messrs. ALEXANDER & COLBY,
MORRIS PUTNAM STEVENS, Esq.,
FRANK L. ECKERSON, Esq., 3273
Messrs. TOWNSEND & MANN,
JUDSON G. WELLS, Esq.,
Messrs. GEORGE SANDERS & E. W. POWERS,
WILLIAM R. PAGE, Esq.,
Messrs. WILBUR & LUDLOW,
Messrs. BULLOWA & BULLOWA,
G. T. GOLDTHWAITE, Esq.,
Proctors for the several claimants in the above entitled action.

3274 It is hereby stipulated that the deposition of this witness may be taken down in shorthand, and that the stenographer's minutes, when written out, shall be deemed in compliance with the statutes, signing, certifying and sealing of deposition waived.

Copy to be served on Mr. Murray, Counsel for several claimants.

APPEARANCES:

Mr. MURRAY, for Claimants.
Mr. JONES, for Petitioner.

JAMES A. DUMONT, having first been duly sworn,
3275 deposes and says in answer to the following interrogatories:

EXAMINATION BY MR. JONES:

Q. General, will you kindly state your full name, age and occupation? A. James A. Dumont; occupation Supervising Inspector of Steamboats.

Q. How long have you held your present position? A. Twenty-six years.

Q. Your official post is in Washington? A. Yes, sir.

Q. And your duties and those of your office are prescribed by law? A. Prescribed by the statutes
3276 —sections 4402 and 4403 of the Revised Statutes of the United States.

Q. The Board, of which you are the Chief Officer, General, has supervision of the local inspectors in the several ports? A. They have general supervision. Yes, sir.

Q. Under section 4488 of the Revised Statutes, there are various provisions relating to lifeboats and lifeboats disengaging apparatus; among which there is a provision that every sea-going vessel carrying passengers shall be provided with suitable life boats disengaging apparatus so arranged as to

allow such boats to be safely launched which such 3277
vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water; and further, that the Board of Supervising Inspectors shall fix and determine by their rules and regulations the kind of lifeboats, floats and life preservers (line carrying projectiles and the means of propelling them) and drags that shall be used on such vessels and also the kind and capacity of pumps or other appliances for freeing the steamer from water in case of heavy leakage, etc.; and under the subsequent section 4489, it is 3278
provided that the owner of any such steamer who neglects or refused to provide such lifeboats, floats, rafts, life preservers (line carrying projectiles and the means of propelling them), drags, pumps and appliances as are under the provisions of the preceding section required by the Board of Supervising Inspectors, and approved by the Secretary of the Treasury, shall be fined one thousand dollars. Now, will you state, first, what the regulations of your board require as to the number and capacity of life boats in the month of July, 1898? A. To answer that in full I would have to give the regulations.

3279

Mr. Murray: I object, because the rules speak for themselves and have been offered in evidence.

A. The rules and regulations providing inspectors covering that matter are found in Section 12, of Rule 3—total capacity of lifeboats and life rafts on steamers navigating the ocean——

(Copy of table to be furnished)

Q. Is there any other rule of your board with reference to the capacity of lifeboats than the one

3280 you have just cited? A. I don't know of any other in relation to ocean steamers.

Q. Have you a record of the last inspection of the steamer *La Bourgogne?* A. We do not have copies of the certificates—no, sir.

Q. What memoranda have you in your office officially in reference to the last inspection of the *Bourgogne*, and especially concerning her lifeboat and life raft capacity? A. There is the report of June 30, 1898, district of New York, which gives the *Bourgogne* gross tonnage 7,395; number of passengers, 1,019; number of officers and crew, 217; total passengers and crew, 1,236. Number of boats
3281 provided in section 12 of rule 3, 12; capacity, 5,404 cubic feet; total capacity the same, 5,404; number of rafts, 4; total net capacity of rafts in cubic feet, 350.8. Boatage capacity of rafts in cubic feet, 1,200; sum of total capacity of boats and boatage capacity of rafts in cubic feet, 6,604; total carrying capacity of boats and rafts in the number of persons, 660. The total capacity in cubic feet required by the rules and regulations for a steamer is 5,670 cubic feet; whereas, on board the *Bourgogne* there was 6,604 cubic feet.

Q. I believe you did not state the date of that inspection. Have you any? A. I can give you the date of it; the *Bourgogne* was inspected March
3282 29, 1898.

Q. How often are such inspections made? A. Annually. That is regular inspection annually and in many ports there is not much chance of the then annual inspection.

Q. Will you furnish me with a copy of so much of the report from which you read, or a copy of the sheet of the report from which you have read which contains the matter you have testified dated June 30, 1898, relative to the matter to which you have testified? A. Yes; I can furnish you that.

It is stipulated between counsel that copy of report above referred to may be used in evidence without certification.

Q. Then according to the figures that you have just mentioned in connection with the requirements of your rule, the *Bourgogne* had an excess of lifeboats and life raft capacity? A. Yes, sir. 3283

Q. And will you kindly state how much more lifeboat and life raft capacity the *Bourgogne* had than required by the rules of the board?

Mr. Murray: I object to that on the ground that the report and the rules and the law speak for themselves.

A. 934 cubic feet.

Q. Now, turning again to the provision of the statutes in reference to the requirements as to the boat disengaging apparatus, which are in substance that such disengaging apparatus shall be such as to allow the lifeboats to be safely launched while vessels are under speed or otherwise, and also to allow such disengaging apparatus to be operated by one person disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water—will you please state what rules the board of supervising inspectors have fixed and determined with the approval of the Secretary of the Treasury or otherwise, in reference to such appliances? A. There were no rules. None existing at that time. 3284

Q. Was there any rule in existence at any time since the passage of that statute? A. I think there was, but have no personal knowledge. There may be extracts from the records. 3285

Q. Will you kindly refer to those records?

Mr. Murray: I object to the line of testimony on the ground that the statutes do not give the board of supervising inspectors power to fix or determine any such apparatus or to supervising inspectors in conjunction with the Secretary of the Treasury.

3286 A. This is a record of a special meeting of June 7, 1871. Joseph Humphrey, page 18, number 17 of the records—Apparatus for hoisting and lowering boats at sea and detaching boats. The record does not show any future action on that matter and the subsequent record shows that the detaching apparatus which had been presented was not adopted. That was immediately after the passage of the act creating that law.

Later, Mr. W. C. Dodge, same page, No. 31—shows no subsequent action. Nothing appears in the records in regard to that—either approval or disapproval, except in an inferential form. I would
3287 state in evidence that the board of supervising inspectors at a meeting in 1873, as reported, adopted a preamble and resolution as follows:

> "Whereas, the experience of this board is against the use of the disengaging apparatus heretofore approved and used as a life saving instrument, and
>
> Whereas, in accordance with the provisions of the second part of the 11th section of the act of February 28, 1871 (which is now section 4491 of the Revised Statutes), requiring this board to approve of all kinds of instruments, machines or equipments for the
> 3288 better security of life required by that act presupposes that the right resides in this board to condemn and disapprove of such instruments, etc., as do not accomplish their objects;
>
> Therefore, be it resolved that all the actions of this board heretofore approving of all kinds of boat disengaging apparatus be and is, hereby repealed."

Mr. Murray: I object to this testimony as immaterial, incompetent and irrelevant.

I would state that this received the special ap- 3289
proval of the Secretary of the Treasury——

Mr. Murray: I make same objection.

and since that day there has been no disengaging apparatus approved by the board.

Q. State what appliances for lowering and detaching lifeboats are approved by your board and the local inspectors at New York? A. There is none approved by our board. As I said, the approval of any device by the board and the Secretary of the Treasury would compel the use of that device on every steamer requiring a device under that act.

Q. State, if you know, whether the ordinary block 3290
and fall with the ordinary hook for disengaging lifeboats is an appliance which is passed by the inspectors of steam vessels. A. In answering that I would say that the ordinary hook is the hook most generally used in the steamboats in the United States.

Mr. Murray: I object and move to strike this out as not being responsive.

Q. State whether or not the board of supervising inspectors, as far as you know, and whether the local board of inspectors at New York have yet discovered or know of any device for lowering and de- 3291
taching lifeboats which may be operated by one person disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water. A. I could not tell you what the local inspectors have found out.

Q. The question also includes your board with the approval of the Secretary of the Treasury. A. I stated that there have been none approved.

Q. Have you or your board any knowledge of a device that would answer the purpose I just mentioned? A. Since the action of the board, within

3292 the past thirty years they have not found a device complying with the text of the law in regard to a detaching apparatus.

Q. Do you know whether or not the provisions of the statute to which I have just referred in regard to the kind of boat-disengaging apparatus had any reference to any particular device known at that time?

Mr. Murray: I object on the ground that the statute is not properly stated in the question.

A. I could answer that question by hearsay only.

Mr. Murray: I object to hearsay.

3293 Q. Hearsay is not, strictly speaking, evidence, but I would like to have you state what you have understood to be the fact in that connection? A. My only information on that point is legendary—a legend of the office—that such is the case—that the law was made to fit a specific device that was here in Washington and presented to the committees of Congress at that time.

Q. What was that device? A. I do not know. I could only assume it was one of those which was presented to the board at the meeting in June.

Q. Did that apparatus or either of those that you have mentioned meet the requirements of the stat-
3294 ute? A. As I read from the minutes there was not.

Q. Well, now, General, I would like to have you state in your own way the substance of what you have just stated. A. I would put it in this shape. Several years ago, at a meeting of the board, there was a great effort made to secure the adoption of a detaching apparatus, called the "Standard Automatic Releasing Hook." There were a great many protests made to the board, amongst others a letter from a gentleman connected—the general manager of the Morgan Line of steamers—in which he said

(the letter will show that)—"I well remember at 3295
the time that nearly thirty steamers were compelled to adopt an automatic contrivance which cost something like sixty dollars a boat, from $250 to $300 a ship. We did all we could to avoid the expense of the adoption of what we knew was not only an expensive, but a dangerous apparatus." I would add to that, that as the ships have not been compelled to put on any such automatic hooks since 1873, it must have been only an automatic hook, that the board had adopted previous to that time. This is legendary again, but I have understood that every ship was required to put on the hooks at that time.

Mr. Murray: I object to this as hearsay, immate- 3296
rial and incompetent and move to strike it out.

While on that subject I would like to state further, giving the basis of the action of the board from 1873 until the present time. The board subsequently, at the same meeting, '73, adopted a preamble and resolution stating the conditions that was claimed such apparatus should have, in order to meet the approval of the board were, "First, that the disengaging apparatus shall not become fixed or gaged by ice in cold weather; second, that the disengagement shall be sure and at the will of the person in command of the boat at the moment of 3297
launching or detaching the same, that the device is secure as to disengagement of the boat when striking the water, that it shall not be liable to disarrangement nor shall its operation be automatic."

Q. Do you know of any experiments in your service or of any reported to you as to the practical operation of the so-called standard automatic releasing device for lowering and disengaging lifeboats, and, if so, state the result of those experiments. A. I would state that there have been many experiments made, at two different times, in regard

3298 to the standard automatic hook as shown by the records of the board of supervising inspectors. In the proceedings of 1894 Lieut. Lucian Young presented a detaching apparatus by Mr. Raymond—and I would like to explain here that this part that I have quoted does not give the name of the apparatus, but I think a previous part of the proceedings does name the standard automatic releasing hook. The committee was invited to witness tests on January 27th. The committee, with Mr. Young, proceeded to the Potomac River to witness a test of the above named apparatus, but I was informed that they were not ready to make a test. On Febru-
3299 ary 3rd, the following Saturday, however, six tests were witnessed by the committee on the United States steam tug *Triton*, four of which were unsuccessful, and the committee asked for discharge of further consideration of the matter. That is one phase of the case. Subsequently, another experiment was made, and the following report is offered from the report of the board of supervising inspectors, '97-'98.

(Copy.)

EXTRACT FROM PROCEEDINGS OF BOARD OF SUPERVISING INSPECTORS, 1897 AND 1898.

3300

Mr. Chancellor, chairman of the Committee on Life-saving Appliances, made the following report relating to the test of boat detaching apparatus witnessed by the Board at New York, February 3, 1898:

The Committee on Life-saving Appliances, having had under consideration the communication of Chauncey S. Truax and J. J. H. Brown, presented to the Board by the Supervising Inspector-General on the 24th of January, 1898, in relation to boat-detaching apparatus, beg leave to report that your

committee, together with other members of the 3301
Board, except the member from the eighth district, excused on account of sickness, in pursuance of the Board's resolution, approved by the Secretary of the Treasury, visited New York on the 1st instant to witness practical tests of the automatic detaching boat-hooks presented to this board by Mr. Chauncey S. Truax, counsel for the owners of the same.

On Wednesday, the 2d instant, Captain Abbey, of revenue cutter *Dexter,* which steamer had been placed at the disposal of the Board for testing the above named apparatus, and also that of Captain Brown, of Buffalo, reported to the President of the Board at noon of the 2nd instant that the cutter 3302
had arrived from New Bedford that morning, but that he did not think it feasible to make experiments that day, as the ship clogged up with ice, as were the boat hooks and tackles of the Automatic Hook Company.

In consequence of said report the experiments were postponed until Thursday, the 3rd instant.

The members of the Board were placed on the *Dexter* at 10 A. M., on the 3rd instant, by the revenue cutter *Manhattan,* which had been detailed for that purpose through the kindness of the surveyor of customs at New York.

At about 10.30 A. M. the *Dexter* weighed anchor 3303
and proceeded to the mouth of the Narrows. A brisk breeze was blowing from the northwest. When off Stapleton, Staten Island, the Brown unhooking device was lowered and unhooked successfully four times. The automatic was also successfully lowered and unhooked four times. Then a boat, with ordinary hooks attached to blocks and hooking into eyebolts on rings, was successfully lowered and unhooked with equal success, the tests in each case being made with the vessel under speed.

Your committee would report, in the case of the

automatic hook, that, as this Board has already, in a report made at the present session, decided it to be strictly an "automatic" detaching boat hook, which does not fill the requirements of Section 4488, Revised Statutes, which requires a detaching apparatus to be in control of one person, which is not the case of the device under consideration, they beg leave to be discharged from its further consideration.

In relation to the Brown detaching apparatus your committee would report that, though four successful lowering tests were made with this detaching hook, it developed a very dangerous tendency to unhook automatically, as on taking the boat from the water the fourth time and when clear of the water quite a distance, the bow hook disconnected itself, allowing the boat to plunge down into the water, and only for the quickness of the people on deck at the after fall letting the fall go by the run, the boat would have plunged entirely under water, and perhaps have drowned its two occupants, two of the crew of the revenue cutter *Dexter*. As it was, the boat was more than half filled with water.

In conclusion, your committee would report that the tests of the ordinary hooks confirmed their previous convictions that such hook accomplished its purpose with entire satisfaction, and they are not aware of any real reason for the use of any others; and in view of the fact that the peculiar requirements of Section 4488, Revised Statutes, have been a dead letter for twenty-seven years, because of the apparent inability of constructing such a detaching apparatus as defined in the law, which law we quote as follows:

* * * shall have the lifeboats required by law provided with suitable boat-detaching apparatus, *so arranged as to allow such boats to be safely launched while such vessels are under speed, or*

otherwise, and so as to allow such disengaging ap- 3307
paratus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles, by which it may be lowered to the water.

Your committee, therefore, would respectfully suggest the advisability of striking out from Section 4488, Revised Statutes, the italic words above quoted. Were this done, the Board would be enabled to bring into use, by its approval, numerous safe devices that have been before it, but which they are deterred from doing because of the peculiar technical requirements referred to in the law as it now reads.

E. P. CHANCILLER, 3308
M. J. GALVIN,
W. H. MURDAUGH,
Committee.

This report was adopted by the Board of Supervising Inspectors as above. I want to mention for the information of both of you gentlemen that this matter was not prepared for this case, but is prepared because I am called on by Congress, and I have therefore had to have this matter before me, and it happens to come in handy now. I would state that this question concerning the automatic hook—that this same hook, the standard automatic hook, was before the board—— 3309

Mr. Murray: I object because this had nothing material to do with the case, being subsequent to July 1st, 1898.

at its recent meeting in January, 1902, and declined to approve it as shown by the following report:

3310 REPORT No. 172.

TREASURY DEPARTMENT.

Rooms of the Board of Supervising Inspectors of Steam Vessels,

WASHINGTON, D. C., January 30, '02.

(Report of Committee on No. 55.)

The Committee on Life Saving Appliances having had under consideration the Standard Automatic Releasing Hook (Raymond's) presented to the Board by *through* the Supervising
3311 Inspector *of the* General *District,* on the 18th day of January, 1902, *relating to* beg leave to report as follows:

The above mentioned device had been submitted to your Board at several of its sittings since 1895, and has been refused adoption *beg leave to report as follows*: by reason of the failure of said device to comply with the requirements of Section 4488 R. S.

(Note at foot of page 14.)

(Copy of above was taken from copy made on printed form, and blanks and underscoring was copied from same.—Stenographer.)

U. S., which reads in language too plain to be mis-
3312 understood (Copy herewith) * * * "provided with suitable boat disengaging apparatus so arranged as to allow such boats to be safely launched while such vessels are under speed, or otherwise, and so as to allow such disengaging apparatus to be operated by *one* person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water." On the 28th instant your committee gave a hearing to the representatives of the above mentioned device, Mr. J. P. Raymond and Mr. Ira Harris, who filed sev-

eral papers with your committee for reference, 3313
among which was an opinion of the Solicitor of the Treasury, April 12, 1901, relating to questions submitted to him by the Department relative to the adoption of your Board of a device similar to the one under consideration. The essence of said opinion appears to your committee to be contained in the paragraph of the Solicitor's opinion, which in substance advises that no boat disengaging apparatus can be used that has been condemned by the Board of Supervising Inspectors. The device under consideration by your committee has been so condemned on one or more previous occasions.

Captain Rodgers of the Army Transport *Kilpat-* 3314
rick, plying between San Francisco and the Philippine Islands, which ship's boats throughout, excepting two large ones, is fitted with the device under consideration, told the chairman of this committee, while inspecting that steamer last year, that he (Rodgers) considered said device absolutely dangerous, and cited one or two instances where in its use endangered the lives of some of his crew. Capt. Rodgers' statement was emphasized by his chief officer, who was then present, and as your chairman now remembers the conversation, had received a serious injury through placing too much reliance on the automatic character of the aforesaid boat de- 3315
taching device while being in a boat lowered thereby.

Capt. John G. Silva addressed a letter to the Supervising Inspector General under date of January 28, 1902, copy herewith, wherein he states that the device under consideration was fitted to the boats of the yacht *Dreamer*, under his command, to the extent of six (6) pairs, which he found it necessary to discard, and in lieu thereof had his boats fitted with blocks having plain hooks. He states that the automatic hooks unless moused would un-

3316 hook themselves. Therein is to be found the danger in use of that automatic device. The hooks of which are so sensitive to the action of opening and closing unless the same are moused while hanging to the davits while the vessel is under way the boat is liable to become detached and lost, or stove by the rapid descent of one of its ends to the water. Mr. Raymond and his attorney have among the papers mentioned submitted to your committee testimonials from some ship masters that speak well of the working of his automatic detaching device. It does not appear from those papers that the hooks work automatically or remain in their position
3317 unaided by men having a turn of the lanyard attached to the knob of the hook around its neck, in each end of the boat to keep them from unhooking before the boat took the water. Such was the method adopted in exhibiting the operation of said device under skilled manipulation on board the U. S. Revenue Cutter *Dexter* in the harbor of New York, Feb. 18, 1897. Otherwise the extreme sensitiveness of the hooks in question to shock or touch renders them an element of danger rather than one of safety, especially so under trying circumstances. Hence it being apparent to your committee that the standard automatic boat detaching device under consideration cannot be safely
3318 controlled or operated by *one* person disengaging both ends of a boat simultaneously as she takes the water as specifically required by law, Sec. 4488, U. S. R. S., above mentioned.

Therefore your committee cannot recommend the adoption by your Board of the so-called Standard Automatic Boat Detaching Device.

(Signed) JOHN BERMINGHAM,
C. H. WESTCOTT,
JAMES STONE,
Committee.

(Copy of Capt. Silva's letter referred to in Report.) 3319

St. Y. *Dreamer.*

BOSTON, Mass., Jan. 26th, 1902.

Hon. JAMES A. DUMONT,
Supervising Inspector General,
Steamboat Inspection Service,
Treasury Dept., Washington, D. C.

MY DEAR SIR:

In reply to your inquiry as to my experience with the releasing hook for davit falls, I would say I used for one season (6) six pairs of releasing hooks of the Raymond make, in the above mentioned yacht, but discontinued their use and substituted plain hooks in their place for the following reason. I 3320 found that unless they were moused they would unhook themselves. I also found that the shape of the hook and the part upset in swivel were altogether too weak to sustain the weight and strain of our marine boats.

I use now a plain hook with a mousing, and feel more security than with the patent gear.

I do not, however, speak for other class of vessels than yachts. Personally I have no use for them, and laid them away and substituted plain hooks at extra cost.

Very respectfully yours,

(Signed) JOHN G. SILVA, 3321
58 Lonsdale St.,
Dorchester, Mass.

The report was adopted unanimously by a yea and nay vote.

Mr. Murray: I make the above objection.

Q. General, will you please state whether you, in your capacity of supervision inspector general, made a report to the Secretary of the Treasury dated January 17, 1901, in reference to a bill which

3322 had been introduced in the House of Representatives on May 24th, 1900, No. H. R. 11, 839, entitled "a bill to amend Section 4488 of the Revised Statutes——

Mr. Murray objects.

of which I hand you a copy,——

Mr. Murray repeats his objection.

There they are. A. I made such a report as that.

Q. Is that a copy of your letter to the Secretary of the Treasury and is the other paper a copy of the bill to which I referred?

3323 Copy of the report and the bill are offered in evidence by petitioner and marked respectively "Exhibits A and B of this date."

Q. I would also like you, General, if you under date of March 6, 1901, communicated with the Secretary of the Treasury requesting the opinion of the Solicitor of the Treasury with respect to certain matters mentioned in that communication? A. Yes; the Secretary of the Treasury was asked for an opinion.

Q. Is that a copy of the communication to which I have referred? A. Yes, that is a copy.

3324 Paper is offered in evidence, marked Petitioner's Exhibit "C" of March 1, 1902.

Q. Did you subsequently receive through the Secretary of the Treasury the opinion of the Solicitor of the Treasury, and is this a copy? A. I did receive such an opinion. Yes, sir; that is a copy.

Paper offered in evidence and marked petitioner's Exhibit "D" of March 1, 1902.

Q. Now, General, in this letter asking for this opinion (petitioner's Exhibit "C" above referred to) you stated, among other things, that "since the

date of said circular and for similar reasons, the 3325
law in respect to boat-detaching devices has been suspended as to its technical requirements, because of the lack of concurrent action on such devices by the Board of Supervising Inspectors and the Secretary of the Treasury, as required by Sections 4488, 4489 and 4491 Revised Statutes, to make the law technically effective, although it has been made practically so by the action of the local boards of inspectors." Will you please explain what you mean by the use of the words "the law has been made practically so [effective] by the action of the local boards of inspectors? A. By requiring all those vessels to have detaching hooks which I deem 3326
to be absolutely safe, and as good a device as can be used.

Q. What kind of detaching devices do you refer to? A. I refer to the ordinary hook.

Q. Can that ordinary hook that you speak of accomplish the purposes required by Section 4488? A. It accomplishes the purpose desired there; it is easily unhooked. There is no trouble in unhooking it. I would state further that I have no recollection of ever hearing of an accident to lowering a boat with the ordinary hook.

Q. What I want to get at, General, is this: does this ordinary hook which you now refer to, technically comply with the requirements that every vessel carrying passengers and every such vessel navigating any of the northern and northwestern lakes shall be provided with suitable lifeboat disengaging apparatus so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water? 3327

Objection by Mr. Murray, not necessary.

3328 Q. Do you know of any device that is capable of satisfying the requirements of the statute I have just mentioned? A. I do not.

Q. Then if I understand you aright, in your reference to the law being made practically effective by the local boards, you refer to the ordinary block and fall and the ordinary hook? A. That was what I had in mind. I speak from personal experience.

CROSS-EXAMINATION BY MR. MURRAY:

Q. General, the section 4488, previously discussed, provides that every such vessel shall have
3329 the lifeboats required by law provided with suitable boat-disengaging apparatus so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water.

The first part of that statute says: "Every steamer navigating the ocean, or any lake, bay or sound of the United States shall be provided with such numbers of lifeboats, floats, rafts, life preservers (line-carrying projection and the means of
3330 propelling them) and drags, as will best secure the safety of all persons on board such vessel in case of disaster." Now, you state that the *Bourgogne* had a total capacity of 6,604 cubic feet and a total capacity for carrying passengers according to law of 660 persons. I understand that these are the figures that appear in the report of June 30, 1898 Now, you made another statement taken from a slip of paper which was the *Bourgogne* only required 5,670 cubic feet. Don't your rules provide as to how such capacity and cubic feet shall be measured? A. Yes, sir.

Q. Will you kindly look at rule 3 and state how 3331
that is to be done? A. Sub-section 2 comes under section 2 of rule 3. The carrying capacity of all lifeboats shall be determined by the following rule: Multiply the outside length, outside width, and inside depth together, and the product by decimal .6 and divide the product by 10 for general lake, bay or sound steamers; and for river steamers divide the product by 7—the quotient will be the number of persons such a boat is allowed to carry.

Q. Now, using that rule, will you kindly state how you get the number of boats allowed on the *Bourgogne* as being for 660 passengers? A. Only by the measurement described there, the details 3332
of which I have not here—only have the condensed statement.

Q. Then you don't know? A. They have different sizes of boats.

Q. In the report in the column "said number of passengers," the number of passengers is given as 1,019; in the last column, entitled "the total carrying capacity of the boats or rafts by the number of persons." What is that? A. 660.

Q. So that all you know about the *Bourgogne* is what you get from this report and from the report which makes it out that the only boat capacity that she had was sufficient to carry 660 passengers? 3333
A. Yes, sir.

Q. If she had aboard more passengers than 660, would she have been provided with a sufficient number of lifeboats as would best secure the safety of all on board? A. Practically, yes. Because that was all the boats she could carry without interfering with the management of the boat, because carrying more boats would create more danger than the lack of boats. I would state that as a general principle.

Q. Does the report state whom the *Bourgogne*

3334 was inspected by? A. No, sir; this report does not It is simply a report of the boat capacity of the steamer and the statement of the New York examiner that she had an excess of 994 cubic feet. That was the difference I made. Have you figured it out?

Q. No, sir. A. Suppose you figure it out?

Q. It is not necessary. Now, General, do your duties as supervising inspectors at the various ports where inspections of the vessels are made—have they on orders or general instructions with regard to what kind of boat disengaging apparatus they shall pass? A. Nothing, only what is contained in the order issued by the Secretary of the Treasury
3335 a year or two ago. Substantially, until the board adopts some suitable device, they should see that the boats have suitable detaching apparatus by which they can be lowered and unhooked.

Q. Do you know of any case in which a vessel navigating the ocean which was subject to the inspection of the United States according to the provisions of Section 4488 is equipped with the automatic releasing hook device? A. I think there are some.

Q. Can you state which ones you know of? A. Well, I can state in general terms. During the past year—the record is not finished yet—about 80
3336 per cent. of all the steamers required under that law to use disengaging apparatus would use the common hook: twenty per cent. would use a different hook—about a dozen different varieties.

Q. The question was, do you know of any vessel navigating the ocean subject to your inspection? A. Our records show some.

Q. They are passed then by the inspectors? A. They are passed.

Q. Was there no prohibition against them? A. The orders of the Secretary of the Treasury deemed it suitable for the purpose that they should pass

them without to the name or title. Whatever they 3337
found or deemed suitable.

Q. Do you know if the United States navy use them? A. I think they do.

Q. Do the United States revenue cutters? A. I think they have one boat on each ship supplied with the automatic releasing hook.

Q. Then all you know is that they have one boat?

Q. It has been testified in this case that they have practically adopted them, is untrue? A. I should think it was untrue. Practically they have adopted them; they are putting them in—that is what I think that means—every ship has a set. They are in use on every ship, but not used on every 3338
boat. I think I can get you testimony on that point.

Q. Then I understand you to say that from what you know, practically every one of the revenue cutters have a boat partly equipped with the releasing device? A. I wouldn't be so strong as that. The large cutters have one boat.

Q. I'd like to go back to that question of the Secretary's orders? A. In this that I refer to a question was asked and you were informed that the absence of provision by the Board of supervising inspectors of any device or kind of disengaging apparatus--it is discretionary with the local inspectors to decide as to the applicability of any device 3339
they find in use on any steamer they may be called on to inspect, and to pass that same if they deem it suitable and without regard to any specific name or title by which such device may be known or called by their makers, but the inspectors are not called upon to pass upon such device except when found in use upon the steamer. That is the decision of the Department dated January 11, 1899.

Q. You said at one time that several years ago great efforts were made to induce a compliance with the requirements of the statute and the per-

3340 sons who were promoting the automatic hook sought to have that adopted as complying with the law. Does that show that the letter you read from the President of the Morgan Line did not refer to the fact that this particular automatic hook had been theretofore adopted and rejected? A. No.

Q. The automatic hook that had been rejected some ten years prior to that time—— A. Was a different hook.

Q. So that the result of this great effort to have the standard releasing hook adopted was simply ineffective? A. Practically.

Q. It has not been officially adopted? A. No, sir.

3341

Q. Now, in the ordinary block and fall apparatus does there not have to be a man at each end of the boat so that it is impossible for one man to disengage that boat simultaneously at each end? A. Yes, it is the same as the automatic hook exactly.

Q. If a boat equipped with the automatic releasing hook is water borne it will release simultaneously, will it not? A. If it strikes square in the water, but if it hits the stern end it could easily be tipped up, and if it is the forward end it will go under the water.

Q. Now, General, did you ever see an experiment made with the standard automatic hook? A. I

3342 saw the recent ones.

Q. Where was that? A. On board the *Dexter*.

Q. I understand that was about '96-'98? A. The experiments were made just previous to that.

Q. Did it come to your information or to your knowledge—was it your information or did it come to your knowledge that there had been improvements and perfections in the device since the first experiments of 1894? A. They claimed that they had made improvements, but I didn't know.

Q. You did not see the experiments made in 1894? A. I do not think I did.

Q. Where four out of six were unsuccessful? A. 3343
I did not see them.

Q. Did you see the experiments with the vessels under speed in the Narrows at New York harbor? A. There was a man at each end of the boat and unhooked it.

Q. Didn't the balls of the hook fall of their own weight? A. Not until the men let go. They would have unhooked at each end if water-borne and unhooked at one end if water-borne at one end.

Q. Did you see the boat water-borne at one end and not at the other end? A. I did not.

Q. So that it is simply your opinion that they would have gotten into difficulty? A. It is a sci- 3344
entific and mechanical fact.

Q. Now, I want to ask you once more. Did you ever see at any time, during all of your experience, which I see is long and important, the ordinary block and fall system released by one man? A. No, sir.

Q. Have you any records in your office to show what was the device in use on the *Bourgogne* in July, 1898? A. No, sir.

Q. But that the ordinary block and fall is not adopted by the steamboat inspectors, so that the responsibility rests entirely with the company or owner of the boat as to the kind of apparatus they 3345
use? A. I could not answer that.

Q. As far as you or the inspectors or the government regulations are concerned? A. There has been none approved; until one is approved it is not the duty of the inspectors to see what hooks the ships use. There is no penalty attached under the law for failure to do so in the absence of an approved hook, as stated by the Solicitor of the Treasury in his decision.

Q. That is, there is no penalty by statute? A. The penalty made in 4489 would not apply to that

3346 device or a failure to have them, because it is a prerequisite that there must be some device which shall be approved.

Counsel: I move to strike that out as a conclusion of law, and not responsive.

Q. Are those various records, letters and reports that have been offered in identification here—are they of records in this office? A. Yes, sir.

Q. Were they taken from the records at your command? A. Which do you mean?

Q. Those records that have been produced here? A. I have been producing a whole lot.

3347 Q. The papers that were to be copied as exhibits. I want to know if they were furnished by this office? A. There were some copies furnished by this office. Mr. West was here and asked for some matter, and wanted a copy, and I told him there was no objection, and when I was sitting on the board they said that Secretary Spaulding wanted to know if there was any objection.

Q. Who is Mr. West? A. The gentleman sitting here.

Q. Who is he? A. I don't know.

Q. What were the papers?

3348 In reply to Mr. Murray's question, "Who is he?" Mr. Jones replies, "The former superintendent of the French line.

A. I really don't remember what I showed him.

Q. You testified at one time under the direct-examination that you had no records in the office of any accident happening by the getting out of boats equipped with the block and tackle. A. I think I said that.

Q. Have you any records in your office of any boats, or any modern disaster where they could not get their boats out, or did not succeed in getting

their boats out? A. I don't know. Generally, 3349
there have been cases where they could not get the boats out. I know where lives were lost by not getting the boats overboard, because nature, in its kind Providence, took the boats overboard.

Q. Do you recollect any case of vessels which could not get their small boats out on account of the rapidity with which the steamer went down? A. I think that was the case on the *Rio Janciro.*

Q. Ordinarily, according to your expert opinion, should boats aboard a ship which has been struck in collision and sank thirty-five minutes afterward—ought not the boats to be gotten out prior to the sinking? A. A great many conditions might pre- 3350
vent that.

Q. One of those conditions, and one of the primary ones, would be on account of the mechanism of the apparatus with which it was equipped? A. If you will describe that apparatus, I will be better able to answer. There is nothing in any book that I know of that would make any difference.

Q. That is all.

(Signed) JAMES A. DUMONT.

Subscribed and sworn to before me
this 3rd day of March, 1902.
(Signed) EMORY H. BOGLEY,
[SEAL.] Notary Public. 3351

I hereby certify that all corrections herein made and by me noted as designated by "Noted E. H. B. N. P." appearing in margin opposite same, were made by deponent before execution hereof.

(Signed) EMORY H. BOGLEY,
Notary Public.

3352 **(Petitioners' Exhibit "A" of March 1st, 1902. E. H. B., Notary Public.)**

(Copy.)

TREASURY DEPARTMENT,

[L. S.] A. STEAMBOAT INSPECTION SERVICE.
Office of the Supervising Inspector-General.

WASHINGTON, January 17, 1901.

The Honorable
THE SECRETARY OF THE TREASURY,
Washington, D. C.

3353 SIR:

I have the honor to acknowledge the receipt, by reference to this office for report, of a communication from the Committee on Interstate and Foreign Commerce, House of Representatives, enclosing H. R. Bill No. 11839, Fifty-sixth Congress, 1st Session, entitled "A Bill to Amend section forty-four hundred and eighty-eight, Revised Statutes of the United States."

I have the honor to report that on April 3rd, 1900, this office reported on H. R. Bill No. 10154, referred by the Committee on Merchant Marine and Fisheries, containing two amendments to section 4488
3354 of the Revised Statutes, the second of which was practically the same as the amendment now proposed to the statute in H. R. Bill No. 11839, referred by the Committee on Interstate and Foreign Commerce, upon which second amendment this office made the following report, which it desires to reaffirm as to the present bill.

"In respect to this change in section 4488 of the Revised Statutes, it is the opinion of this office that whilst a change is desirable in the law requiring detaching apparatus for lifeboats, the change suggested in the present bill is not in the direction to

obtain the best results, and that it would be preferable, when Congress shall make a change, that it adopt that recommended upon several occasions by the Board of Supervising Inspectors as follows: *Namely*, to strike out from the existing law the words following the word "apparatus" as shown in the first line of page 2 of the present bill, down to and including the word "water" in the seventh line, as indicated by the pencil erasure in bill returned herewith. 3355

The Board's reasons for their recommendation were that if section 4488 should be amended as recommended by it, 'The Board would be enabled to bring into use, by its approval, numerous safe devices that have been before it, but which they were deterred from doing because of the peculiar technical requirements referred to in the law.' (Page 86, proceedings, 1898.)" 3356

It is the opinion of this office that there is not only no special merit in H. R. Bill No. 11839, but that its passage would be improper, as the object of the amendment on its face seems to be to enact a law to fit a specific device and to make its use, if the amendment should become a law, compulsory upon all steamers of the class mentioned in section 4488 of the Revised Statutes, to the exclusion of all other boat-detaching devices, notwithstanding the devices in present use are just as safe, as experience has proved, as that indirectly referred to in the proposed amendment to the bill before me. 3357

In conclusion I would say that, if there has been any accident in the merchant marine of the United States through the inefficiency of the detaching apparatus for unhooking small boats from the tackles used for that purpose, I have been unable to find it on record in this office, and that the matter of the use of suitable devices should more properly be left with the Board of Supervising Inspectors of Steam-

3358 boats than for Congress to legislate practically for a specific device and consequent monopoly for oppressing the steam vessel interest of the country, to prevent which it is recommended that the bill under consideration be amended in the manner suggested by the Board of Supervising Inspectors, *namely*, by striking out therefrom all after the word "apparatus" in the second line, page 2, of the bill, down to and including the word "water" in the eighth line. Very respectfully,

(Signed) JAS. A. DUMONT,
Supervising Inspector General.

3359 **(Petitioner's Exhibit "B" of March 1st, 1902. E. H. B., Notary Public.)**

(Copy.)

56th CONGRESS, 1st Session. H. R. 11839.

IN THE HOUSE OF REPRESENTATIVES.
MAY 24, 1900.

Mr. Dayton introduced the following bill; which was referred to the Committee on Interstate and Foreign Commerce and ordered to be printed.

3360 A BILL

TO AMEND SECTION FORTY-FOUR HUNDRED AND EIGHTY-EIGHT, REVISED STATUTES OF THE UNITED STATES.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section forty-four hundred and eighty-eight of the Revised Statutes of the United States be amended so as to read as follows:

"SEC. 4488. Every steamer navigating the ocean, or any lake, bay, or sound of the United States,

shall be provided with such numbers of lifeboats, 3361
floats, rafts, and life preservers, and every ocean-going steamer shall also be provided with line-carrying projectiles and the means of propelling them, and drags, as will best secure the safety of all persons on board such vessels in case of disaster; and every seagoing vessel carying passengers, and every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats re-

2

quired by law provided with suitable boat-disengaging apparatus so managed as to allow such boats to be safely launched while such vessels are under speed, or otherwise, and so as to allow such disen- 3362
gaging apparatus to be operated either automatically or by one person, disengaging both ends of the boat simultaneously from the tackles, by which it may be lowered to the water. And the Board of Supervising Inspectors shall fix and determine, by their rules and regulations, the number of lifeboats, floats, rafts, life preservers, and drags that shall be used on such vessels, and also the kind and capacity of pumps or other appliances for freeing the steamer or sailing vessel from water in case of heavy leakage, the capacity of such pumps being suited to the navigation in which the vessel is employed."

Sec. 2 That the said original section forty-four 3363
hundred and eighty-eight be, and the same is hereby, repealed.

Sec. 3. That this Act shall take effect from and after its passage.

3364 **(Petitioners' Exhibit "C" of March 1st, 1902. E. H. B., Notary Public.)**

(Copy.)

[SEAL.] TREASURY DEPARTMENT,

STEAMBOAT INSPECTION SERVICE,
Office of the Supervising Inspector General.

WASHINGTON, March 6, 1901.

To the Honorable,
THE SECRETARY OF THE TREASURY,
Washington, D. C.

3365 SIR:

I have the honor to request an opinion from the Solicitor of the Treasury regarding the construction to be placed upon that provision of section 4488 Revised Statutes relating to the use of a certain lifeboat-detaching apparatus described therein as follows:

"* * * and every sea-going vessel carrying passengers, and every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such
3366 vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water."

Section 4489 Revised Statutes provides a penalty for the non-observance of the provisions of section 4488 Revised Statutes of one thousand dollars against the owner of any steamer—

"* * * who neglects or refuses to provide such lifeboats, floats, rafts, life preservers, * * *

drags, pumps, *or appliances,* as are, under the pro- 3367
visions of the preceding section (4488), *required by the board of supervising inspectors, and approved by the Secretary of the Treasury.*"

At the sessions of the Board of Supervising Inspectors in 1871 and 1872, the Board did require all steamers to be furnished with the boat-detaching apparatus described in section 4488 Revised Statutes, but at its meeting in 1873 the following Preamble and Resolution was adopted by the Board and approved by the Board, and approved by the Secretary of the Treasury, Hon. William A. Richardson (Circular No. 37, March 27, 1873):

"Whereas, the experience of this Board is against 3368
the use of the disengaging apparatus heretofore approved and used as a life-saving instrument; and

Whereas, in accordance with the provisions in the second sub-division of the eleventh section of the act of February 28, 1871, requiring this board to approve of all kinds of instruments, machines, or equipments, for the better security of life, required by that act, presupposes that the right resides in this board to condemn and disapprove all such instruments, etc., as do not accomplish their objects; therefore

Be it resolved, that all the action of this board heretofore approving of and regulating all kinds 3369
of boat-disengaging apparatus be, and is hereby, repealed."

Since the date of said circular and for similar reasons, the law in respect to boat-detaching devices has been suspended as to its technical requirements, because of the lack of concurrent action on such devices by the Board of Supervising Inspectors and the Secretary of the Treasury, as required by sections 4488, 4489 and 4491 Revised Statutes, to make the law technically effective, though it has been made practically so by the action of the local

3370 boards of inspectors, acting upon the provisions of section 4417 Revised Statutes, in requiring in every case of inspection of a passenger steamer before certification that the same—

"* * * is in a condition to warrant the belief that she may be used in navigation as a steamer, with safety to life, and that all the requirements of law in regard to fires, boats, pumps, hose, life preservers, floats, anchors, cables, *and other things,* are faithfully complied with; * * *."

The usage tentatively adopted by the local inspectors after the resolution of 1873 has necessarily been continued, because of the fact, as shown by
3371 their records, that the subsequent boards of supervising inspectors have been as unsuccessful in finding a technically legal boat-disengaging device as was their predecessor of 1873.

This questions upon which this office requests the opinion of the Solicitor of the Treasury, arising from the facts above stated, are as follows:

First, does a steamer failing to have on board the technically legal boat-disengaging apparatus described in section 4488 Revised Statutes, become liable to the penalties described in section 4489 Revised Statutes, the Board of Supervising Inspectors not having recognized nor the Secretary of the Treasury having approved such a require-
3372 ment since 1873; or, in other words, does it not require the concurrent action of the Board of Supervising Inspectors and the Secretary of the Treasury to make the terms of section 4488 Revised Statutes applicable to such steam vessels?

Second, under the conditions named, would it not be the duty of the Secretary of the Treasury, under the provisions of section 4462 Revised Statutes, which requires that officer to—

"* * * make such regulation as may be necessary to secure the proper execution" of Title 52

Revised Statutes, to authorize and direct the local 3373
inspectors of steam vessels, in the absence of any requirement of the Board of Supervising Inspectors as to boat-detaching apparatus,—

"to decide upon the applicability of any device they may find in use upon any steamer they may be called upon to inspect, and to pass the same, if they deem it suitable, without any specific name or title by which such devices may be known or called by their makers" (Department Decision 20522, January 11, 1899)?

Very respectfully,
(Signed) JAS. A. DUMONT,
Supervising Inspector-General. 3374

(Endorsed)—Treasury Department, Office of the Secretary, Washington, D. C., March 6, 1901. Respectfully referred to the Solicitor of the Treasury for an opinion on the legal points presented in the within communication from the Supervising Inspector-General of Steam Vessels.—(Signed) O. L. Spaulding, Assistant Secretary.

(Petitioners' Exhibit "D" of March 1st, 1902. E. H. B., Notary Public.) 3375

(Copy.)

DEPARTMENT OF JUSTICE,

OFFICE OF THE SOLICITOR OF THE TREASURY.

WASHINGTON, D. C.,
April 12, 1901.

SIR:

By reference of Assistant Secretary Spaulding, I am in receipt of a letter addressed to the Secretary of the Treasury on the 6th ultimo, requesting that

3376 he obtain the opinion of this office with regard to the proper construction to be placed upon section 4488, R. S., relating to the use of lifeboat-detaching apparatus described therein as follows:

* * * "and every sea-going vessels carrying passengers, and every such vessel navigating on the northern or northwestern lakes, shall have the lifeboats required by law provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such vessels are under speed or otherwise, and so as to allow such disengaging apparatus to be operated by one person, disengaging both ends of the boats simultane-
3377 ously from the tackles by which it may be lowered to the water."

A penalty for the non-observance of this requirement is provided by section 4488, R. S., for the offender.

* * * "who neglects or refuses to provide such lifeboats, floats, rafts, life preservers, * * * drags, pumps, or appliances as are, under the provisions of the preceding section (4488), required by the board of supervising inspectors, and approved by the Secretary of the Treasury."

These sections are codified from section 52 of the act approved February 28, 1871. Soon after (in 1871 and 1872) the Board of Supervising Inspec-
3378 tors did require, in pursuance of said statute, all steamers to be furnished with boat-detaching apparatus, and other equipment for the security of life.

However, at its meeting in 1873, the Board, with the approval of the Secretary of the Treasury, adopted the following Preamble and Resolution:

2.

"Whereas, the experience of this board is against the use of the disengaging apparatus heretofore approved and used as a life-saving instrument; and

Whereas, in accordance with the provisions in

POOR COPY

the second subdivision of the eleventh section of 3379
the act of February 28, 1871, requiring this board to approve all kinds of instruments, machines or equipments for the better security of life, required by that act, presupposes that the right resides in this board to condemn and disapprove all such instruments, etc., as do not accomplish their objects; Therefore, be it

Resolved, That all the action of this board heretofore approving of and regulating all kinds of boat-detaching apparatus be, and is hereby, repealed."

The Board, with the approval of the Secretary of the Treasury, having the authority to adopt the said or any life-saving contrivance, had an equal 3380
right to discontinue the use when it was ascertained by experience that it was unsafe or ineffective. It will be observed that no particular patent or special kind of disengaging apparatus is prescribed by the statute. The use of such device was evidently intended by Congress to be experimental. The Board of Supervising Inspectors, with the approval of the Secretary of the Treasury, would, under the statute, be authorized to adopt and use and other kind of detaching apparatus that might be found to be safer and more satisfactory. And while the further use of a disengaging device which has proved to be dangerous may be discontinued, yet the statute contemplates that a disengaging 3381
apparatus shall be provided. *La Bourgogne*, 104 F. R., 823.

Since the action of the Board in 1873, the statute authorizing boat-detaching devices has been practically suspended for want of concurrent action on the use of such devices by the Board of Supervising Inspectors and the Secretary of the Treasury as required by sections 4488, 4489 and 4491 of the Revised Statutes.

3.

3382 It seems, however, that the use of this contrivance has been continued by some of the local boards. The Supervising Inspector General in his letter says:

"The use tentatively adopted by the local inspectors, after the resolution of 1873, has necessarily been continued, because of the fact, as shown by their records, that the subsequent boards of supervising inspectors have been as unsuccessful in finding a technically legal boat-disengaging device as was their predecessor of 1873."

On the eleventh of January, 1899, the Acting Secretary of the Treasury ruled that it is discretionary with the local inspectors to decide upon the
3383 practicability of any device they may find in use upon any steamer they may be called upon to inspect and to pass the same, if they deem it suitable, without regard to any specific name or title, by which any such device may be known or called by their makers. The devices under consideration were the said "boat-disengaging apparatus." (Syn. 20, 522.)

Upon the facts as stated, my opinion is requested on the following questions:

First, does a steamer failing to have on board the technically legal boat-disengaging apparatus described in section 4488, Revised Statutes, become
3384 liable to the penalties described in section 4489, Revised Statutes, the Board of Supervising Inspectors not having recognized nor the Secretary of the Treasury having approved such a requirement since 1873; or, in other words, does it not require the concurrent action of the Board of Supervising Inspectors and the Secretary of the Treasury to make the terms of section 4488, Revised Statutes, applicable to such steam vessels?

Second, under the conditions named, would it not be the duty of the Secretary of the Treasury, under the provisions of section 4462, Revised Stat-

utes, which requires that officer to * * * make 3385
such regulations as may be necessary 'to secure the proper execution' of Title 52, Revised Statutes, to authorize and direct the local inspectors of steam vessels in the absence of any requirement of the Board of Supervising Inspectors as to boat-detaching apparatus—'to decide upon the applicability of any device they may find in use upon any steamer they may be called upon to inspect, and to pass the
4.
same, if they deem it suitable, without regard to any specific name or title by which such devices may be known or called by their makers. (Department Decisions, 20, 522, January 11, 1899)?"

3386

It will be observed that the penalty imposed for a violation of section 4488 is incurred only under section 4489 by the neglect or refusal on the part of the owner of any vessel to provide lifeboats, floats, rafts, life preservers, drags, pumps or appliances required by the Board of Supervising Inspectors and approved by the Secretary of the Treasury. Without this concurrent action, fixing definitely the kinds of appliances to be used, no penalty could be incurred under section 4489. Therefore, the first inquiry must be answered in the negative.

The second inquiry should also be answered in the negative. It would not be the duty of the Secretary of the Treasury under the provisions of sec- 3387
tion 4462 to authorize and direct the local inspectors of steam vessels in the absence of "any requirement of the Board of Supervising Inspectors" to decide upon the applicability of any device they may find in use for boat-detaching purposes.

True, section 4462 authorizes the Secretary of the Treasury to make such regulations as may be deemed necessary to secure the proper execution of Title LII, but this has reference only to his general supervision over the subject matter of said Title,

3388 and must be considered in connection with the sections that authorize him to exercise certain supervisory functions in connection with the Supervising Board. Section 4491, R. S., prescribes:

No kind of instrument, machine, or equipment, for the better security of life, provided for by this Title shall be used on any steam vessel which shall not first be approved by the board of supervising inspectors, and also by the Secretary of the Treasury.

If it requires the action of the Board of Supervising Inspectors with the approval of the Secretary, to adopt a disengaging apparatus, I do not think the Secretary *alone* could authorize the local
3389 inspectors to have and use the said device when it appears to be a fact that the Secretary and the Board have, by their joint action, repudiates and discontinued its use. I would, therefore, suggest that if it is deemed advisable to resume the use of this particular device, it should be authorized, as in the first instance, by the Board of Supervising Inspectors, with the approval of the Secretary of the Treasury.

While I have answered the questions proposed by the Assistant Secretary, it may be further observed that the Secretary of the Treasury and the Board of Supervising Inspectors have, as required by the statute, authorized the use of "boat-disengaging
3390 apparatus," and have only condemned the further use of such apparatus as had proved unsafe. So, the general approval of such disengaging apparatus as may be safe and trustworthy, stands unrepealed by the action of the Secretary and the Board in 1873.

While it is true that the resolution of 1873 relates to "all kinds of disengaging apparatus," yet, the somewhat sweeping language must be taken to mean the kind or kinds that had proved deficient in the accomplishment of the object, and not disen-

gaging apparatus generally. Otherwise the Secre- 3391
tary and Board would be placed in the predicament of repealing a plain and express requirement of the statute. Besides it will be noted that the preamble refers only to the *one* "life-saving instrument" that has been used.

Hence, it would seem competent, therefore, for the local inspectors, under the general supervision of the Secretary, to require that every sea-going vessel, navigating the ocean, or any lake, etc., be furnished with a "boat-disengaging apparatus" as required by the statute.

However, as we have seen, the local inspectors, ever with the approval of the Secretary of the 3392
Treasury, could not authorize or permit the use of a particular kind of disengaging apparatus that had been condemned by the Secretary and the Board of Supervising Inspectors.

The letter referred to is herewith returned.

Very respectfully,

(Signed) MAURICE D. O'CONNELL,
Solicitor.

The Hon.
THE SECRETARY OF THE TREASURY.

(Endorsed)—Deposition of General James A. Dumont. Put in at end of testimony at trial. 3393

3394 (It is hereby stipulated that the deposition of this witness may be taken down in shorthand, and that the stenographer's minutes, when written out, shall be deemed in compliance with the statutes, signing, certifying and sealing of deposition waived.)

APPEARANCES:

Mr. MURRAY for claimants.
Mr. JONES for petitioner.

Captain C. F. SHOEMAKER, having first been duly sworn to tell the truth, the whole truth and nothing but the truth, deposes and says in answer to
3395 the following interrogatories:

EXAMINATION BY MR. MURRAY:

Q. Captain, what is your full name? A. Charles F. Shoemaker.

Q. And your position, please? A. Captain of the revenue cutter service, chief of division.

Q. Captain, are you familiar with the boat-disengaging apparatus known as the "Standard Releasing Hook"? A. Somewhat.

Q. Has that been adopted and is it in use on any of the revenue cutters? A. It is, and has been adopted.

3396 Q. How long has that been? Can you state about how long that has been known? A. Do you mean in my service, in use there?

Q. Yes. A. Well, I should say it has been about five years.

Q. Did you have experiments made on it prior to its adoption? A. No; I had it put in operation without having any experiments made with it, but it has been used very constantly and very frequently since.

Q. Has it given the service satisfaction? A. So far; yes.

Q. Is it to be installed on the new vessels? A. 3397
We have not got to that point yet.

Q. Was it installed on the last vessel? A. It was.

Q. Has it been adopted in exclusion of any other? A. No. That is to say, there has been no other presented, and that is the only boat-detaching apparatus.

Q. So that that is the best one? A. The best and only one.

Q. Can you state about how many vessels it is in use on? A. I think about eleven or twelve; it may be more, but that is my recollection. I would not be sure about it. 3398

Q. How many vessels in the revenue service? A. Do you mean that would carry that?

Q. Yes. A. Twenty-four or twenty-five.

Q. And is that apparatus applied to all the life-boats on each ship? A. No; from one to three or four on each ship. For instance, one vessel would have one boat, some other vessel would have three or four boats with the apparatus attached.

Q. And the remaining boats would have—— A. Ordinary hooks.

Q. Why is it—if there is any reason—that this automatic apparatus is not on all the vessels? A. None, except the lack of funds; it costs about 3399
twenty-five dollars a set and it takes a good deal of money to go around. I did it as far as I thought was necessary or expedient.

Q. Do you prefer it to the ordinary hook? A. Well, now, you are coming to a question where it requires personal experience to determine and a question of that kind I am not prepared to answer. I would not like to say that I prefer that to the old hook or the old hook to that. I have had a great deal of experience with the old hook, practically

3400 twenty-five years of it, but never have had any personal experience with this one.

Q. Is it substantially the fact that the adoption of the automatic hook on those vessels where you place it is experimental? A. Largely so. It was put on with this view—that wherever this hook was placed in use on board a vessel of the cutter service it was to have a special crew for that particular boat, you understand, in order that they might be drilled in its use and have it always in readiness and to prevent the possibility of accident, and that was the main spring of the whole thing, the principal object in putting it on board these vessels, so that
3401 we might have a sure method, if such a thing could be found, of detaching a boat without the absolute necessity, as in the case of the old hooks, of overhauling down the backfalls to unhook and to hook on, which is just as dangerous as the other. That is about all.

Q. Then I understand you to say that even on those vessels where it is applied it is not used on all the boats? A. Oh, yes; that is true, although the smaller vessels carry two to four of the boats; for instance, would have one set of detaching apparatus, and perhaps on two or three of the larger vessels carrying six or eight boats, there might be
3402 three or four boats. I could not tell exactly.

Q. Do you use the new automatic apparatus and the old hook on the same vessels? A. Oh, yes; right along.

Q. Then the experimental stage has lasted four or five years? A. Yes, it is long past the experimental stage.

Q. I understand you to say, or want to find out whether you did say it has been adopted? A. It has been adopted.

City of Washington, District of Columbia, to wit: 3403

I, EMORY H. BOGLEY, do hereby certify that Charles F. Shoemaker, deponent in aforegoing, read and fully understood same and did swear to same as his testimony as given under oath in above entitled cause.

[SEAL.] EMORY H. BOGLEY,
Notary Public.

(No endorsement.)

Exhibit 9, Oct. 10/01.

3404

(Cover)

For identification
Pets. Ex. No. 4
Octo. 2, 01.

Communicated to
Lawyer Coulon.

REPORT

OF THE COMMISSION CHARGED WITH THE TRIALS OF THE POSTAL STEAMER "LA BOURGOGNE" AFTER HER TRANSFORMATION.

Communicated to the Chief of the Bureau of contested claims. 3405

(sgd) V. DAYMORD.

REPORT OF THE COMMISSION charged with the trials, after transformation, of the Postal Steamer "*Bourgogne*" of the Compagnie Generale Transatlantique.

IN CONFORMITY with the ministerial decisions of June 6, 1888, and Octo. 23, 1888, the Special Com-

3406 mission of Examination and Acceptance of Postal Steamers, composed of:

Messrs. PRADIER; Captain, President,
PLUYETTE, Naval Engineer of the 2nd Class
ANDRE, Postal Receiver and Government Commissioner at Havre.

Met upon call of its President March 3, 1898, on board of the "Bourgogne," Steamer of the General Transatlantique Company for the purpose of proceeding to a renewal of sea trials of this Steamer, after her transformation.

3407 The General Transatlantic Co. was represented by Mr. GROLOUS, Engineer, Assistant of the Chief Engineer of the Company, and by Mr. PINEZON, Engineer, having charge of engines at the Penhoet shipyard.

HISTORY.

"La Bourgogne" was constructed at La Seyne by the Company of Forges and shipyards of the Mediterranean, and underwent her sea trials in May, 1886, following which trials she was accepted for the postal service and assigned to the New York Line. The ship came to St. Nazaire in 1897 to re-
3408 place her boilers, and her being out of commission was taken advantage of to change her motor to quadruple expansion and to do some considerable repairs to her hull. The work done may be resumed as follows:—

HULL.—The stern post was changed and the after plating doubled as far as the after collision bulkhead, so as to increase the rigidity of that part of the ship. The plating of the rudder was replaced. The forward ballast tank was entirely repaired; the plating of same was partly changed;

those frames which were much worn were replaced 3409
in part and strengthened; a breast hook was put in half way up the hold to increase the rigidity of the forward part. Breaks had little by little appeared towards the middle of the length in the bends of the upper deck; the plates were replaced and the weak places strengthened by a supplementary doubling plate of about 1 metre in length.

The columns supporting the bridge were partially torn away by the effect of the seas received by the bridge; their fastening to the upper deck has been strengthened. Beside these repairs the following changes have been made in the ship.

1st.—The smoking room of the first-class pas- 3410
sengers was lengthened 2 metres 10 centimetres at the forward end, and the entrance to the smoking room changed on account of this alteration in the forward bulkhead.

2nd.—The sparring was changed; it now consists of 2 pole masts with fore and aft sails and the spars fitted for yards were sent ashore.

Motor.—Before the transformation the motor consisted of three compound engines, each with two superposed cylinders, putting in movement the three cranks of the same shaft placed at 120 de- 3411
grees. This machinery was changed to quadruple expansion by the following transformation. The small cylinder of the forward engine was sent ashore and replaced by a small cylinder, with a cylindrical valve, 1m. 120 in diameter, receiving steam at the pressure on the boilers. From this receiving cylinder the steam goes into the two upper cylinders of the central and after engines and there expands a second time, from there it is turned into the large cylinder of the central engine where it undergoes a third expansion, then finally it passes into the

3412 large cylinders forward and aft, where it expands a fourth time before being expelled into the condenser.

There are special steam connections with the upper middle and after cylinders in order to facilitate the starting. There is in use the Brown system for starting, by both steam and water; in case of injury the starting may be done by hand. There are three condensers, each having an independent circulating pump; the air pump, feed pump and bilge pump are three in number, forming three groups, comprising a pump of each kind set in motion by 3 side levers, one on each cross head of the
3413 main engine. The condensers are provided with direct injection. For making good the loss of fresh water there are two evaporators of the Weir system each capable of furnishing 20 tons per 24 hours. These evaporators work one into the other in succession, using the circulation of the steam between the H. P. cylinder and the first intermediate pressure cylinder. The following figures sum up the principal results of the apparatus:—

Number of cylinders		6	
Diameters of Cylinders.	High pressure (1 cylinder)	1m	120
	Intermediate pressure No. 1 (2 cylinders)	1m	074
	Intermediate pressure No. 2 (1 cylinder)	2m	034
	Low pressure (2 cylinders)	2m	034
	Stroke of pistons	1m	700

3414

Average admission during fraction of stroke.	High pressure cylinder (forward crank)	0.74
	Intermediate No. 1 middle (middle crank)	0.74
	Intermediate No. 1 after (after crank)	0.74
	Intermediate No. 2 (middle crank)	0.80
	Low pressure, forward (forward crank)	0.74
	Low pressure, after (after crank)	0.75

Power indicated by the engine ..... 8000 horse.

Number of revolutions corresponding thereto 66

Screw.	Diameter	7m
	Number of blades (stated)	4
	Pitch at entrance	8.282
	Pitch coming out	9.04
	Fraction of pitch average	0.383

Evaporating apparatus: The former boilers were landed and replaced by 12 boilers of 11k 500

return frame, each with 3 plain furnaces. The fur- 3415
naces are of Purve's system, arched, 1m 20 in diameter. Each boiler is provided with a horizontal cylindrical steam drum connected with the boiler by two steel necks. The following figures show the principal results of the apparatus:

Number of boilers,	12
Number of furnaces per boiler,	3
Diameter of boiler,	4m 65
Length of boilers,	2m 90
Diameter of furnaces,	1m 20
Diameter of steam chests,	3m 30.

Grate surface.....	for one group....	6^{2}m— 516
	total	78^{2}m—1920
Heating surface...	for 1 group.....	176^{3}m – 423
	total	2117^{3}m—0760

3416

	Ordinary.	Stay.
Number of tubes per group.....	213	90
Diameter of tubes.....	76m/m	68m/m
Thickness of tubes.....	4m/m	8m/m

Piping.—The principal steam piping has been constructed subject to safe conditions, approaching those customary in the Navy; i. e. putting fixed points at the extremities of the pipes ending in sliding joints and in putting in the latter stay bolts as security against their blowing out. 3417

There are also two auxiliary boilers set at 4ks which run the auxiliary apparatus when the ship is at the wharf. These boilers are oval, return tubular, their dimensions are

Length	2m 600
Width	1m 900
Height	3m 700

3418 TRIALS.

As the hull of the ship has not undergone any important transformation, as to its bulkheads, piping, etc., the naming of the Commission had as its principal object the verification of the working of the new motor and evaporative apparatus such as it was after the replacing of the boilers and the change in the engine, nevertheless during the trials the Commission has made a complete examination of the accommodations, has had worked the equipment for fire and for the extinction of fire by steam, has gone through a representation of getting a boat into the water and finally verified the good con-
3419 dition of the ship. Besides this it has informed itself of the result of the trials of the stability of the ship made under date of Feby. 19, 1898, the principal results of which are shown below and in comparison with those of the trials of May 25, 1886, given in the report of the 1st commission which decided upon the aceptance of the ship:

	Trials of May 25, 1886.		Trials of Feby. 19, '98.	
	Draft.	Meta Centre.	Draft	Meta Centre.
3420 Normal loading, water ballast empty.....	7.317	0.65	7.50	0.57
Normal loading, water ballast empty and coal burned.....	6.38	0.199	6.59	0.12

The stability of the same draft is therefore about the same as at the first trials of the ship. The Commission therefore believes that the Steamer is in as good condition as before. Passing then to the examination of the engine, the Commission had to assure itself, accordng to the terms of Art. 20, 21 and 24:

1st. That the engines and boilers fulfill all the 3421
conditions required by the regulations relating to trial proofs and that notably the boilers are capable of supporting in a cold state the usual trial pressure of the Navy, without perceptible alteration.

2nd. That the ship, at her trial of not less than four hours over the measured mile, should realize an average speed of at least 17 5/10 knots, with half a cargo of the maximum weight of passengers and heavy goods and half her coal.

3rd. That the ship can take on board, in addition to the supply of combustible necessary to accomplish the passage for which she is intended, a re- 3422
serve equal to at least one-tenth of the said supply.

1st. As to that which concerns the proofs of security, the engineer member of the Commission makes known that all the tests of both boilers and cylinders have been made, as well as the hot and cold tests of all the steam piping.

2nd. As to that which concerns the measurement of speed and of the consumption which serves to define the distance which the steamer is capable of covering, trials were had at sea on March 3rd and 4th in presence of the Committee.

3423

The steamer got under way at 8.30 in the morning and ran down to leeward of Belle Isle where three measured miles were laid off for the purpose of calculating the speed; the results of the trials are recorded below.

Duration of trial..... 4 hours.
State of the sea..... Very smooth.
Wind.....Moderate from the North.
Average draft of ship 6m 76
Average pressure on boilers..... 11k 7
Average vacuum of condensers ..... 68 c/m

3424 Average number of revolutions over measured mile 65.75
Corresponding power 8356
Length of measured miles gone over 3 miles 7276.
Number of single runs made 3
Average speed realized 18k 29

The run over the first measured mile was begun towards noon and in the calculation of average speed, run No. 2 made in the opposite direction from the two others, has been doubled. In order to exactly estimate the trial speed, there is occasion for correcting the figures 18k 29, given above, by bringing the ship down to the exact draft which
3425 she would have in conformity with her contract, i. e., by deducting from her normal lading half of her movable weights. The draft which would correspond, for her trials, to the conditions fixed by the contract is calculated as follows:

Average draft fully laden 7m 50 corresponding to a deplacement of 10,400 tons.

Variable weights.	Fresh water.... 88 Salt water (ship's use)... 10 Coal.....1704 Provisions ..... 170 Merchandise ... 936	2,908 ÷ 2 = 1,454 T.

3426 Corresponding displacement ..... 8,946 tons.
Corresponding draft 6m 72
Amidship—surface corresponding to trial draft ..... (6.76)—86.89
Amidship—surface according to regulation ..... (6.72)—86.25

Speed according to regulation draft—

$$V = 18.29 \sqrt[3]{\frac{86.89}{86.25}} = 18 \text{ k } 34.$$

The steamer therefore completely satisfied the speed conditions required by the contract.

After running 4 hours at a sustained speed of about 66 revolutions, the engine was put at a voyage rate of about 63 revolutions, nearly corresponding to a speed of 17k 46, and the trial was prolonged during the trip from Belle Isle to Havre so as to give a sustained speed during 24 hours. Finally on March 4th a consumption trial was had, from 9 o'clock in the morning until 3 o'c in the afternoon, for the purpose of determining the distance capacity of the ship. The results of these trials are summed up as follows: 3427

Maximum power obtained....	7,423 horse power
Coal burned during 6 hours....	39,050 kilos
Do do per hour	6,508 k 333 3428
Do do per horse power and per hour.....	0 k 876
Average number of revolutions during 6 hours.....	63.58
Corresponding speed.....	17.k 68
Coal burned per mile	368 kilos
Corresponding speed at the same horse power at a draft of 7m 50.....	16.k 93
Corresponding consumption per mile	384.k 28
Distance from Havre to New York.....	3,130 miles.
Coal required to cover that distance.....	1,203 tons. 3429
Coal required with 10% increase	1,323 tons.
Coal actually taken on board..	1,704 tons.

The bunkers therefore allow the taking on board of the quantity of coal necessary to satisfy the requirements of the contract. During the length of the trial which altogether was of 28 hours, which constitutes an endurance test, the working was satisfactory and there were only found leaks in the

3430 stuffing boxes and other incidents of the same kind. The feed worked well, and the donkey engines were not used. After the trials an inspection was made of the high pressure valve rod, high pressure piston rod, head of connecting rod, of the valves of one feed pump and of one bilge pump. The other takings-apart of the engine were followed by the inspectors at Havre.

These inspections have not given occasion for any remarks.

To SUM UP, the Commission believes that the "Bourgogne" satisfies the conditions of the contract, and may be assigned to the postal service
3431 upon the New York line.

May 5, 1898.

The Captain, President.

(sgd) G. PRADIER.

The Members of the Commission,

(sgd) ANDRE

(sgd) PLUYETTE.

(Each page of the foregoing translation, bears a stamp, reading as follows:

GEO. H. STETSON,
This
translation
3432 guaranteed
correct
66 Broad St., N. Y.)

Exhibit 10, Oct. 10/01, No. 56,355. 3433

Communicated to
Lawyer Coulon.

BUREAU VERITAS.

Stock Company with capital 2,400,000 fcs. (entirely paid up)
International Register for the classification of vessels.
Established in 1828.

Certificate of Classification.
SEAL
Iron and steel vessels Special Survey. 3434

We the undersigned, expert of the Bureau Veritas certify that the French steamer "La Bourgogne" Captain Lebœuf--owner—guaging 7395/2907/6274 tons, nominal horse power 2000, indicated horse power 8000, built of iron and steel at La Seyne, by Forges and Chantiers in 1886, belonging to the port of Havre, has been surveyed and inspected by us—and has been found to be in good sea worthy condition and fit to carry all kinds of goods.

The said ship built under special survey will be entered in the Bureau Veritas and classed ✠ 3/3 L 1. 1. in the first division, subject to Articles 5 and 6 of the rules of which the following is an extract: 3435

Article 5: In order to maintain their class vessels in the first division must undergo a complete inspection at least once every four years.

Article 6, Section 2: Every iron or steel vessel must have its bottom sighted at least once each year——

3436 Section 8: In case of damage or of stranding the ship must be surveyed.

If these formalities are not under gone the class may be taken out of the Register.

Delivered by authority of the Administration at Nantes March 2, 1898.

The Inspector of Bureau Veritas at Nantes.

(sgd) BELAMY

(SEAL)

3437 There is on the end of this certificate the following:

The annual sightings of the bottom prescribed by Section 2 of Article 6 must be mentioned on this certificate which should be exchanged for a new certificate at the time of the periodical inspection (Articles 5 & 6 of the rules).

(Rubber stamp)

This translation guaranteed correct.

GEO. H. STETSON,
66 Broad St., N. Y.

3438

3439

Exhibit 11, Oct. 10/01, No. 51793.

Communicated to
Lawyer Coulon.

BUREAU VERITAS.

Stock Company with Capital 2,400,000 fcs. (entirely paid up)
International Register for the classification of vessels.

Established in 1828.

CERTIFICATE OF INSPECTION OF ENGINES AND BOILERS. 3440

SEAL

SPECIAL INSPECTION.

WE THE UNDERSIGNED, expert engineer of Bureau Veritas, certify that the engines and boilers of the steamer "La Bourgogne," gauging 7395/2907/6274 tons, nominal horse power 2000, indicated horse power 8000, Captain ———, owner Cie Generale Transatlantique, belonging to the port of Havre have been inspected under special survey, and are 3441 at this date in good working order.

The said engines and boilers will be entered in the Veritas Register with the mark ✠

This certificate is delivered subject to the prescriptions of Article 34 of the Rules for iron and steel vessels, extract from which follows.

Article 34, Sections 4 and 5: An annual inspection of the engine and boilers shall be had, as much as possible. It is obligatory at the times at which the ship undergoes the peri-

3442 odical inspections prescribed by section 1 of Article 5. In case of damage the engine and boilers must be inspected by an expert of the Society failing which the class may be with-drawn.

Delivered by authority of the Administration at Nantes, March 2, 1898.

(sgd) J. TORDILLON.

(Rubber stamp) Translation guaranteed correct.

3443 **Exhibit 12, October 10/01.**

June 17, 1898.

For identification
Pets Ex 7,
Octo 2/01.

(Stamp) (Duplicate.)

Certificate of inspection
Ship "La Bourgogne"

From the Minutes of the Clerk's Office of the Tribunal of Commerce of Land and Sea sitting at Havre, has been taken the following:

3444 Communicated to Lawyer Coulon.

Capt. Dupont

To-day, the 15th June one thousand eight hundred and, ninety eight at nine o'clock in the morning, at the request of Mr. Dupont, Captain of the French vessel called "La Bourgogne" of the port of Havre, we, Abraham and Durand dwelling in Havre, ex-shipmasters and inspectors of vessels fitted out

in this port, in execution of the law of the thirteenth August one thousand seven hundred ninety one, went on board of the said vessel made fast in the basin of the Eure, where being, we, in presence of the Captain and his first Officer, inspected the said vessel, as well outside as inside, together with her spars and her pumps and found them in condition to begin loading for the voyage to New York. 3445

Broker Mr. Cie Transatlantique

IN TESTIMONY WHEREOF, we have, with the above mentioned, signed these presents, and postponed the continuation of our operation until the vessel shall be ready to be dispatched. 3446

(sgd) L. DURAND J. ABRAHAM DUPONT and Illegible.

(Stamp) Translation guaranteed correct.

AND today June sixteenth one thousand eight hundred and ninety eight at nine o'clock in the morning, same request as above, we Captains Inspectors, before named and subscribed, in consequence of the above postponement, went on board said vessel made fast in the basin of the Eure, where being, we inspected the rigging, sails, anchors and cables, cordage and utensils, and found all in good condition and the ship sufficiently provided with everything necessary for her in order to make the voyage she is about to undertake. She is besides furnished with lanterns and other utensils required by the decree of May 28 one thousand eight hun- 3447

dred fifty eight and subsequent ministerial de-
3448 cisions.

IN WITNESS WHEREOF, we have, with the Captain and his first Officer, closed, agreed upon and signed the present Report of Inspection which we certify true in all its contents, in order that it may be filed in the Clerk's Office of the Tribunal of Commerce of this City.

(signed) L. DURAND J. ABRAHAM DUPONT and illegible

3449 Recorded in Havre, the twelfth November one thousand eight hundred ninety eight.

Received three francs seventy five centimes.

(signed) RACINNE.

(stamp) Translation guaranteed correct.

This present copy certified exact by the undersigned Clerk, the whole in accordance with what has been stated by instrument filed, drawn up on this date, bearing this mention.

Recorded in Havre the twelfth November one thousand eight hundred ninety eight.

Receive Five francs sixty three centimes. To the
3450 Clerk twelve and one half centimes.

(signed) CAPTAIN,
(SEAL) Compared,
S. MARTIN.

On the side is written:

Seen by me President of the Tribunal of Commerce of Havre for certification of the signature of Mr. E. Martin, Clerk of the Tribunal.

Havre, November 12, 1898.

(SEAL) (sgd) GUILLAUME PATIT.

(stamp) Translation guaranteed correct.

Petitioner's Ex. 8, Oct. 9/01. 3451

Exhibit 13, Oct. 10/01.

Form No. 2177.

By Authority of the United States of America.

Examined by
G. W. Wilmurt,
Ass't Inspt'r.

Examined by
J. W. Fleming
Asst. Inspt'r

CERTIFICATE OF INSPECTION.

(Stamp affixed)
U. S. Custom House, N. Y.
Cashier's Office
Fees Received
20 cts.
PAID
Jan. 20 1899

3452

FOREIGN PASSENGER STEAMER.

Fee, 20c

I. A. S.

Foreign Passenger Steam LA BOURGOGNE (Fr.)

PORT OF NEW YORK, APPLICATION having been made in writing to the undersigned, Local Inspectors of Steam Vessels, to inspect the Steamer *La Bourgogne* of Havre, Belonging to the Co. Gen'l Transatlantique Line, whereof Eugene de Bocaude is the Agent; having performed that duty on the 29th day of March, 1898, DO CERTIFY that said steamer was built at La Seyne, France, in the year 1886, and is of 7395 gross tons burden, as appears from the marine documents on board, and that the hull is constructed of , and that said vessel has 114 staterooms and 407 berths, and is allowed to carry 1019 passengers, namely:

3453

341 first cabin, 66 second cabin, and 612 deck or steerage passengers.

3454 SAID VESSEL is a Screw steamer, provided with 3 Quadruple Expansion Engine of 42", 44⅛" & 79.32 inches diameter of cylinder, 5' 7½" feet stroke of piston, 12 Scotch type boilers, 9 5/12' in length and 15 3/12 feet diameter, made of steel plate 1⅜" thick, in the year 1897, and may carry with safety 163 pounds of steam to the square inch, and no more.

WE FURTHER CERTIFY that the within named steamer is in all respects in conformity with the provisions of the act of Congress approved August 7, 1882, amending Section 4400, Revised Statutes of the United States.

3455 The following particulars of inspection are enumerated, namely:

WHOSE NUMBER OF BOATS, 12.

Whole number of Life-boats, 10, of which 0 are metal are all are wood.	Has 10 water-tight Bulk-heads.
Number of Life Rafts. 4	Number of Steam Fire Pumps..... 3
Number of Drags..... 3	Connected by supply pipe through ship? Yes.
Number of Anchors.. 7	
Number of Cork Life-Preservers..... 1,236	

LINE CARRYING PROJECTILE.

3456 Lyle type of gun No. 254, complete.	Area of Safety Valves, 301.44 3"
35 Cork buoys.	Number of Gauge Cocks..... 36
Number feet of Hose, 1,600	Number of low-water gauges..... 12
Number of Feed Pumps to Boilers... 5	Number of Fusible Plugs..... 12
Size of Hose, 2½" diameter	Draft of water...27 feet
Number of Safety Valves..... 24	

(Signed) PETER C. PETRIE, } Local Inspectors of Steam Vessels.

(Signed) THOMAS H. BARRETT, }

STATE OF NEW YORK, }
City and County of New York, } ss.: 3457

Sworn to before me this 29th day of March, 1898.
(Signed) EDWIN C. DONNELL, (Notarial Seal.)
Notary Public.

CUSTOM-HOUSE, PORT OF NEW YORK.

January 20th, 1899.

I certify that the above Certificate is a true copy of the original on file in this office.

This Certificate expires March 29th, 1899.

(Signed) F. H. LYMAN,
Deputy Collector of Customs. 3458

The above form of Certificate for Foreign Passenger Steam Vessels was adopted by the Board of Supervising Inspectors at their annual meeting held in the city of Washington in January, 1896.

JAS. A. DUMONT
Supervising Inspector General and President Board of Supervising Inspectors.

Amended form approved February 4, 1896.

J. G. CARLISLE,
Secretary of the Treasury.

3459

(Endorsed.)
Exhibit 13.
Form 2177.
Foreign Passenger Steamer
Tonnage,
Nationality,
Name of Line,
Name of Agent,
Certified copies issued....., 189
Inspectors: .....
.....
Received at Custom-House....., 189

3460 (On cover.)

J. W. Wilmurt, Respondent's Exhibit "A," December 30/01.

Form 2181 A,

SPECIAL INSPECTORS OF FOREIGN STEAM VESSELS.

REPORT OF EXAMINATION
OF
HULL AND EQUIPMENTS
of Steamer
La Bourgogne
3461 of
Havre

Preliminary to Granting Annual Inspection Certificate.

☞ This book to be kept on file in the Office of the Special Inspectors of Foreign Steam Vessels.
March 29, 1898.

(1st page.)

NOTE.—All the entries made in this book pertaining to the equipments for saving life, and the condition of the hull and boiler for safety, as required
3462 by the law, act August 7th, 1882, and the rules and regulations of the Secretary of the Treasury, must be from actual observation at the time the steamer is examined for inspection. Under no circumstances will inspectors be justified in copying a report from a former examination, or from a previous certificate of inspection.

Under the head of "Remarks," on the 10th and following pages, Inspector or Inspectors must note all changes that may have occurred in the outfit and general condition of the hull, boilers and engines;

giving, in detail, the nature of the repairs, if any have been ordered under their direction. 3463

When the examination of the steamer is completed the Special Inspector or Inspectors making the examination must sign their name or names thereto, after which the book must be placed on file in the permanent records of the office.

JAS. A. DUMONT,
Supervising Inspector-General.

(Pages 2 and 3.)

Name of Steamer, *La Bourgogne.*

Nationality, French.

Class, Screw. 3464

Owner, Compagnie Generale Transatlantique.

Master, Sautelle.

Trade engaged in, N. York and Havre.

Date of Application for Inspection, Mch. 26, 1898.

Date of Inspection, Mach. 29, 1898. Pre. Insp., Oct. 8, 1896, N. Y.

Where built, La Seyne, France. Been out of Commission.

When built, 1886.

Material, steel.

Tons burden, 7,395 gross, 2,906 net.

Number water-tight Bulkheads, 10.

Number State-rooms, first Cabin, 114. 3465

Number Berths, first Cabin, 341.

Number First-cabin Passengers allowed, 341.

Number Berths, Second Cabin, 66.

Number Second-cabin Passengers allowed, 66.

Number Steerage Passengers allowed, 612.

Whole number Passengers allowed, 1,019.

Complement of Officers and Crew, 217.

Total, 1,236.

3466 (Pages 4 and 5.)

No. of Life-preservers, 1,236. (Has 1,340.)

Whole No. of Boats, 12, all wood; thoroughly equipped.

No. of Life-boats, 10.

No. of Life-rafts, 4 Calkins, 19.2 long, 22 in. dia. of cyl.

Has Oars and Life-lines, Yes.

Auxiliary Life-saving Appliances, Yes.

No. and kind, 35 cork Buoys.

Has Line-carrying Projectiles, kind of, Lyle Bronze Gun, No. 254, complete.

No. of Anchors, 7.

3467 Cable Chains, length of, 300 Fath. 2⅜ in. chain.

Marine Drags, 3, one 13 ft., dia. of cone, 132.73; One 12 ft. dia. of cone 113.09

No. of Hand Fire-pumps, portable, one. One 9 ft. dia. of cone..... 63.61

Size of Hand Fire-pumps, portable, 5 x 6..... 132.73

309.43 ft.

No. of Hand Fire-pumps fixed, 2.

Size of Hand Fire-pumps, fixed, 6 x 10, Foreign.

Diameter of Hose, 2½.

3468 No. Feet of Hose, 1,600 and 350 feet pipe, with 11 connections.

Pressure Hose will sustain, 100 lbs.

Water-pipes and Hose on Upper Deck, Yes.

Has additional Steering Apparatus, consisting of wheel and gear aft, steam and hand; 5 compasses for ship and 12 for boats; 24 fire buckets.

2 axes for ship, 12 hatchets for boats.

(Pages 6 and 7.)

Has Signal-tubes from Pilot-house to Engine-room, Telegraph and Tube.

Has Telegraph, Yes.

Rel. tackle. 3469
Has Iron Rods and Chains, Yes.
Telegraph.
Deck-houses properly secured to deck, Yes.
Strong shutters provided for doors and windows, Yes.
Ports in deck-house and ship sides secured, Yes.
Ship on dock and bottom sighted, when, Feb'y 18, 1898.
Distance between Smokestack and Woodwork, all iron.
Distance between Boiler and Woodwork, all iron.
Woodwork protected, all iron.
Draught of water, 27 feet. 3470
Supt., Japhet.
Pres. on boilers, 245 lbs.
Pres. on donkey, 84 lbs.
Size of lights S & port, 7 x 11½.

(Pages 8 and 9.)
Timbers bored at examination, iron examined.
Station Bill, Yes.
Log-Book, Yes.
Assisted in examination by Master,
Assisted in examination by Mate, Yes.
Assisted in examination by Pilot,
GEO. W. WILMURT, (Sig.)
Asnt. Inspector. 3471

Sworn and subscribed to before me }
this 29 day of Mch., 1898. }
EDWIN C. DONNELL, (Sig.)
Notary Public,
New York County.

(Page 10.)

3472 REMARKS.°

Only gen'l repairs since last inspection.
Hull seaworthy for business assigned.

GEO. W. WILMURT, (Sig.)
Asst. Inspr.

Wanted.
Dimensions of boats cut on the stems.

G. W. W.

° See note on first page.

(Page 11.)

5,670 required.

REMARKS.

3473

	BOATS.			
	L.	B.	D.	Feet.
1	27.2	7.5	3.1	373.0
2	" "	" "	" "	373.0
3	" "	5.10	2.3	213.9
4	" "	" "	" "	213.9
5	29.4	8.11	3.10	584.4
6	" "	" "	" "	584.4
7	" "	9.1	3.8	569.5
8	" "	" "	" "	569.5
9	" "	9.3	3.10	599.9
3474 10	" "	" "	" "	599.9
11	25.0	7.5	3.3	361.5
12	" "	" "	" "	361.5
				5,404.4
	4	Rafts	.....	1,200.0
				6,604.4

4 rafts 19.2 long—22 in dia of cyl-good for 30 persons each.

(Page 12.) 3475

REMARKS.

(Lengthwise on page.)

CITY AND COUNTY OF NEW YORK, }
State of New York, } ss.:

I, E. de Bocande, do hereby solemnly swear that the repairs and equipment ordered by the Inspectors to the Steamer *La Bourgogne*, have all been properly completed, and that the boats have been properly marked.

EUG. DE BOCANDE (Sig.)
G'l Agent
French Line. 3476

Sworn and subscribed to before me }
this 29 day of Mch., 1898. }
EDWIN C. DONNELL (Sig.)
Notary Public,
New York County.

(Translation.)

Respondent's Exhibit A for identification, Oct. 10/01.

Wednesday, 12 June, 1895. 3477

Extract.

Stamp. 7 parts. LeBeau. 193 — Fls

Extract from the minutes of the Clerk's Office of the Tribunal of Commerce of the Department of the Seine, sitting at Paris.

The Tribunal of Commerce of the Department of the Seine, sitting at Paris, has rendered the judgment of which the following is the tenor:

Wednesday 11 of June one thousand eight hundred and ninety-five.

3478 Between: Capt. Cordier, dwelling at St. Vellery, in Caux (lower Seine), Plaintiff, For the purpose

1st. Of payment of the value of the *Sully*.

2d. Of the value of her cargo.

3d. Of the price of the provisions.

4th. Of the wages and indemnities of the captain and the crew.

5th. Of damage interests. The appointment of experts for the establishment of the amount of these different elements, about 100,000 francs.

3479 Appearing by Master Fleuret, one of the solicitors of the Tribunal, having charge by the terms of a power under private signature, registered and approved, pleading by Master Delorme, Advocate. On one side:

And in the first place Master Santelli, Captain Commanding the Transatlantique steamer *La Touraine*, dwelling in Havre, Rue Jeanne d'Arc.

Secondly: And the Compagnie Generale Transatlantique, an anonomous society, whose location is No. 6 Rue Auber, in the persons of its Directors and Administrators, at the said location, defenders, against the conclusions of the said plaintiff. Mon 615

3480 Both appearing by Master Triboulet, one of the solicitors of the Tribunal, having charge under the terms of a power under private signature, registered and examined. On the other side;

After having deliberated, conformably to the law, the Tribunal determining upon the demands introduced by the exhibits of the 20th and 22d October last;

Inasmuch as it is established that on the 10th of September, 1894, in an intense fog, at one o'clock and 50 minutes in the morning, the *Sully*, belong-

ing to Fecamp, Capt. Cordier, having on board 3481
twenty-nine men of the crew, and anchored upon the fishing grounds of New Foundland, at 43 degrees 22 minutes north latitude, and 52 degrees 30 minutes West Longitude, has been collided with by the steamer *La Touraine*, Captain Santelli, belonging to the Transatlantique Company, and sunk;

Inasmuch as, in order to resist the demands formed against them, the defenders have pleaded that if Cordier plants himself upon the decisions rendered by the Commercial Tribunal of Martinique, those decisions cannot have the authority of judicial decision; that an examination only could demonstrate whether the responsibility of the colli- 3482
sion should be incumbent upon them, that they contain in fact that the Transatlantique was going at fifteen knots an hour; that is to say, the half speed of the *Touraine*, the speed already reduced by four knots, in no way exaggerated, at which rate on the contrary, the *Touraine* is most manageable, that besides and admitting that it were demonstrated that the speed of fifteen knots was exaggerated, it would remain to be established that it was the exaggerated speed which was the cause of the collision; that is to say, that there is a direct relation between the fault and its consequences; that, in fine, Article 24 of the Regulation of the first of 3483
September, 1884, prescribed to the Captain of the *Sully* to take all precautions commanded by experience in the circumstances; that Cordier has known some minutes before the collision that the *Touraine* was coming towards him, and if he had fired the small gun which he had on board, the collision would have been avoided; that he has thus committed a grave fault, of a nature to throw upon him a responsibility, and that in any case, the greatest part of the responsibility ought to be incumbent upon him; but

3484 Inasmuch as if the judgment rendered by the Martinique Commercial Tribunal, against Captain Santelli, has not the authority of a judicial decision, and does not in any way bind the judges who are to determine the demand of the damage interests presented by the owners of the ship, the Tribunal finds in the debates and in the documents produced, information sufficient and manifest to give a solution to the litigation without ordering an investigation;

Inasmuch as it is suitable, in the first place, to determine as to what concerns the fault charged by the defenders against Cordier;

3485 Inasmuch as no regulation imposed on the Captain of the *Sully* the duty of having on board a small cannon; as besides it is not proved that there was time to fire one; as the examinations show that this vessel was at anchor with its light burning bright; that she was making the regulation signals for fog, and that no fault can be charged upon her;

Inasmuch as, on the contrary, the same examinations, the opinion of the Upper Commission of Ship Wrecks, the debates of which have taken place before the Martinique Commercial Tribunal, composed of men of the business, show in a positive manner that the packet boat *Touraine* was going at the moment of the collision at an exaggerated

3486 speed; as, to this question, Was the speed of the packet boat excessive? the judges have replied Yes, unanimously; as, this manner of view is completely confirmed by the facts set forth before that Tribunal; as in fact the speed of the *Touraine* is from ten to nineteen knots; as at the moment when she has perceived the light on the *Sully* the *Touraine* found herself at about three hundred metres from the fishing boat; as she was going at a speed of sixteen knots and five-tenths, or 509 metres a minute; as at this speed she would need thirty-five seconds

to reach the *Sully;* as the defenders cannot seriously 3487
maintain that this speed has been in the case a moderate speed;

As it ought, on the contray, to be determined that the moderate speed prescribed by the regulation is not, in time of fog, a speed reduced by some knots from the maximum which a vessel can attain; as this speed must be proportioned to the degree of intensity of the fog, and the probability of meeting other vessels; as it must be of a nature to permit a captain to remain always master of his own ship, to the end not only of avoiding the dangers which may present themselves upon his route, but, furthermore, not to be a cause of danger for the vessels 3488
which he may meet; as on arriving on the Bank of Newfoundland, a route which besides, he could have avoided, Captain Santelli ought so much the more to take measures of prudence, as he was not ignorant that during the fishing season he was exposed to meet numerous vessels at anchor; as in fact, as the event has proved, it has not been possible for the *Touraine* to perceive the *Sully* till the collision was already unavoidable; as in spite of the manœuvre executed at once by the *Touraine,* the collision took place, as the *Sully* was struck by the packet boat before the latter could have given complete satisfaction to the manœuvre undertaken by 3489
her captain; as it is thus manifest that navigating in the intense fog at more than sixteen knots an hour, the *Touraine* has collided with the *Sully* only as the consequence of her immoderate speed, contrary to the regulation; as there is, then, a direct relation between the fault committed and the consequences which this fault has produced; as in these conditions the defenders cannot free themselves from the responsibility which is incumbent upon them; as in consequence, there is ground to compel them to pay to the plaintiff,

3490 (1st.) The value of the *Sully;*

(2d.) The value of her cargo;

(3d.) The price of the provisions;

(4th.) The wages and indemnities of the captain and crew;

(5th.) Damage interests.

Inasmuch, however, as the Tribunal has not at present information of a nature to establish the amount of these different elements; as there is reason in consequence, rejecting the provisory demand, to order an examination,

3491 For these reasons

The Tribunal, judging in the first instance, orders that the parties appear before M. Sebasteur, an engineer of naval constructions, whom the Tribunal names as arbitrator and reporter for the settlement of the amount of the different elements specified in the present judgment, which arbitrator shall cause to be presented before him the papers and documents registered conformably to law, shall hear the parties, shall make them agree if that can be done, and, if not, shall put on stamped paper his report which he shall send closed and sealed to the Clerk's Office, to be afterwards concluded and determined
3492 as to what shall belong to it.

Orders that notice of his nomination shall be given to the arbitrator by the Clerk.

Says that in case of refusal or of inability of the arbitrator named, and on notice given to the Tribunal, it shall be provided for an appointment in his stead.

Declares Cordier not entitled to his provisional demand, and discharges him from it, and condemns the defenders by legal means in all the expenses

made up to this day, to the cost of the registering 3493
of the present judgment.

The said expenses are included up to the moment of the present judgment.

Orders that the present judgment shall be executed according to its form and tenor.

So adjudged in public audience by the Tribunal at which sat

M. Palco, Chevalier of the Legion of Honor,
Judge presiding over the audience.

and

MM. Corteclant and Racine,
Supplementary Judges.

At Paris, the day, month and year before stated. 3494

In faith whereof the present judgment has been signed by the Judge presiding at the audience and by the Clerk holding the pen.

In the margin is written:

Paper.....	F7.20
Roles.....	4.20
	F11.40

Registered, the 26th of June, 1895.
Folio 20 nine.
Received 5.63F tenths included.

(Sd.) THE RECEIVER.

[SEAL.] *Compared.* 3495
Six.

For a Copy.
Signature.

3496 **Respondent's Exhibit B, for identification Oct. 10/01.**

CAPTAIN THORB-JORNSEN

v.

COMPAGNIE GENERALE TRANSATLANTIQUE.

3497 JUDGMENT OF THE 20TH OF DECEMBER, 1887.

On Tuesday, December 20, 1887, in the audience held publicly at 2.30 P. M. in the afternoon by

M. AUGUST TOUSSAINT,
Judge.

MM. ALEXIS LEMALE AND ALBERT LE BLOND,
Assistant Judges.

Assisted by
Master ALBERT SAVARY,
Deputy Clerk.

ADJOURNED HEARING.

3498 Captain Thorb-jornsen, commander of the three-masted Norwegian ship *Tellus*, from the port of Tonsburg, plaintiff, appearing by Master Godreuil, Advocate at Havre, whom M. Violletter, his sworn broker and interpreter, has verbally authorized at the audience of the 27th of May last, to represent him and defend him until final judgment

AGAINST

1st, the Compagnie Generale Transatlantique, owner of the steamer *La Bretagne*, and that in the

person of M. de Gaalon, its principal agent at 3499
Havre, dwelling there.

2d, Captain de Jousselin, Commandant of the steamer *La Bretagne,* dwelling at Havre, St. Quentin Street, No. 41. The parties summoned appearing by Master LeMinihy, advocate at Havre, who was verbally authorized by them at the audience of the 27th of May last to represent them, and defend them to a final judgment.

PARTIES HEARD.

Questions.

Shall the demand made by Captain Thorb-jornsen against Captain de Jousselin and the Com- 3500
pagnie Generale Transatlantique as being responsible for the collision of the *Tellus* and of the *Bretagne,* be received? Or ought not it to be decided that there was common fault of the two captains in this collision?

What as to expenses?

The Tribunal having deliberated in secret.

MOTIVES.

Having seen the reports registered and deposited on the 20th and 25th of June last;

Inasmuch as Captain Thorb-jornsen, Commander of the Norwegian ship *Tellus,* has summoned de 3501
Jousselin, Commandant of *La Bretagne,* and the Compagnie Generale Transatlantique, that they may be condemned to pay him and reimburse him by privilege upon the steamer *La Bretagne,* the sum of 130,000 francs for material damage suffered as a Consequence of the collision of the ship *Tellus* and the steamer *La Bretagne,* besides 20,000 francs of damage-interest;

Inasmuch as it results from the two reports of the two captains that on the 7th of May last, at 11 o'clock in the evening, the ship *Tellus* coming from

3502 Rouen, bound for Quebec, was sailing W. S. W. on the starboard tack, with the wind from the N. N. W., while the *Bretagne*, coming from New York to Havre, was steering south 77 degrees east; and as accordingly the two ships were pursuing routes almost parallel, crossing each other only at a very sharp angle;

Inasmuch as about 11 o'clock the fog which had existed since nine or ten o'clock in the evening, with occasional clearings up, grew thick, and became very intense, and as the collision between the two ships took place about eleven o'clock and ten minutes;

3503 Inasmuch as the captain of the ship *Tellus* had his side lights burning bright, two men on the look-out, one of whom was an officer, and was causing the fog-horn to be blown; that in his sea report, affirmed to by the crew, he declares that he had reduced sail at ten o'clock, which diminished his speed and enabled him to manœuvre more easily if he had need to do so, in order to avoid collision, but as this declaration is contested by the depositions of the captain and the crew of the *Bretagne*, who, however, have not had either time or possibility to determine clearly the condition of the sails and the speed of the ship;

3504 Inasmuch as about ten minutes before the collision the captain on the *Tellus* and also his crew heard, two to three points on the starboard forward, the sound of the siren of the *Bretagne*, which did not appear distinct to them, and which they took for a fog-horn; that he then came to port, and came up to the S. S. E. right with the wind, giving three loud blasts on the fog-horn at short intervals, in order to avoid a collision.

Inasmuch as ten minutes afterwards he perceived the lights of a steamer a point aft of amidships on the starboard side, and as the collision has taken place almost instantly;

Inasmuch as the captain of the *Tellus* charges upon the steamer *La Bretagne,* that she has done nothing to aid in saving, but as this is contradicted by the facts, and as, on the contrary, there is only praise to be given to Commander De Jousselin for his coolness and for his prudent manœuvre, which has permitted him, by remaining in contact with the *Tellus,* to save her crew; 3505

Inasmuch as the steamer *La Bretagne,* on her side, had taken all measures of watchfulness and precaution; lights in position, reaching to a great distance, and very clear, constant sound of signals; two men and the officer of the watch on the look-out on the forecastle, a man at the siren, making it sound; the officer of the deck on the bridge, with two helmsmen, and the Havre pilot; 3506

Inasmuch as about 11 o'clock and ten minutes the Commander De Jousselin, heard on the port bow forward the horn of a sailing vessel and the cries of the crew; as he put the helm hard over to come to starboard; has stopped and made his engine go back at full speed, but as a very few instants afterwards he has perceived right in front the sails of a vessel crossing his course, and going to the south, and as the collision has taken place almost immediately;

Inasmuch as, in spite of the fog, the steamer had in no way slowed her speed, and was navigating at very near her maximum of speed, or at 54 turns a minute, as she had gone during all the course of the voyage, as appears from the journal of the engine; as this speed cannot be denied; as it is established by the depositions of the crew, by the officers' log, and by that of the engine to which no order had been given, and on which no manœuvre had been executed before the perception of the sound of the horn of the *Tellus;* 3507

Inasmuch as the ship *Tellus,* which was on the

3508 starboard tack, by coming up into the wind and changing her course, has violated Article 14 of the International Regulations, of 1884, and as the steamer *La Bretagne* in not reducing her speed in a time of fog has infringed Article 13 of the same Regulations, as these two faults have caused the collision;

Inasmuch as, in fact, being on the starboard tack, the *Tellus* ought to have done nothing, since it was certain that noticing the sound of the siren, she had a vessel two to three points ahead, and as by changing her course she has come to cross that of the steamer; as she cannot excuse this manœuvre by
3509 the application of Article 23, which leaves a certain latitude to the Captain, according to the dangers of navigation, and in order to avoid an immediate danger; as the captain of the *Tellus*, having previously met fishing vessels, has feared that he was meeting another, and has deviated from his course, but as that was only a danger which was absolutely contingent and problematical, whilst, on the contrary, from the sound that he heard, he knew the existence of the danger to which he exposed himself by changing his course;

Inasmuch as the objection is made that Article 14 cannot be applied, because in consequence of the fog the ships did not see each other, but as the regu-
3510 lation of 1884 ought to be so much the more rigorously applied, as the dangers of collision are greater; as it is sufficient the *Tellus* should know by the sound, or otherwise, that some ship was on his starboard bow, in order that she should be strictly bound to the execution of the International Rules;

Inasmuch as, besides, it is to be remarked that, although the report of the captain, the deposition of the crew and the report of the arbitrators are silent upon this point, the *Tellus*, after having heard once the sound of the siren which was sounding at least

every minute, must necessarily have heard it again, 3511
as she came continually nearer to the *Bretagne;*

Inasmuch as the speed of the *Bretagne* has been also in the case a cause of the collision; as at sixteen or seventeen knots, the time which passed between the moment when the sound of the horn has been perceived on board and the collision, was almost nothing, and has permitted neither the steamer nor the sailing vessel to accomplish entirely the necessary manœuvres which, if the speed of the ship had been less, would probably have been executed; as the aim of Article 13 in requiring a moderate speed is not to put either of the ships at the point of evolution which is most favorable, but to 3512
give to each of them the necessary time to recognize each other and to execute the manœuvres which are useful; which imports, in fact, that the *Bretagne* may have been in her condition of the greatest manageability if her speed has not permitted her to avail herself of it in order to avoid the collision. As in fact, in some seconds the steamer has been able to come to starboard seven points and a half, but, as a consequence of her speed, this manœuvre has had no other result except to make her collide with the *Tellus*, heading towards her bow, instead of colliding with her directly abeam, which it is true, would have caused her immediate loss and that of her crew. 3513

Inasmuch as taking as established the declaration of Commander De Jousselin, it results from it that the *Bretagne*, going at almost full speed, could have been able between the time when the sound of the horn from the *Tellus* was heard and the collision, by stopping and backing full speed, to reduce her speed to three knots; as it is evident that if the speed had been moderate, conformable to Article 13, the steamer could have been stopped in time, or, in any case, the delay between the hearing of the sound

3514 and the collision would have been much longer, and would have permitted either of the ships to manœuvre effectively;

Inasmuch as the faults of the two ships are, therefore, proved, and as excuse can no more be found for one in the eventual fear of meeting fishermen than for the other, whether in the occasional clearing up of the fog, or in the little time which had elapsed since it had settled down, and as thus the two ships must be declared equally responsible for the collision;

Inasmuch as the expert-report estimates the loss occasioned by the shipwrecking of the *Tellus:*

3515

(1) For the hull of the ship,	82,000	francs
(2) Damage interests, outfit,	12,000	
(3) Effects of captain and crew,	9,550	
(4) Advances made by the counsel,	1,584.55	
(5) Indemnity to the captain,	3,600	
Total,	108,634.55	francs

Inasmuch as, in order to the valuation of the hull of the ship, the experts appear to have based their conclusion upon the amount of the insurance of 78,000 crowns, or 111,428.57, and on the profits of the owner, whilst it is certain that this ship of
3516 1167 tons, built in 1862, and which, although docked in 1886 has the number A2 in the Norwegian veritas, which is hardly the second rank, might be replaced by another ship in identical condition for the price not exceeding of 40,000 or 50,000 francs; as it is, there, this latter sum which must be taken as the value of the hull of the ship at the moment of the loss, that is to say,— 50,000.00

Inasmuch as the Compagnie Generale Transatlantique contests the sum of 12,000 fixed for loss and damage, including advance of clothing by the Consul,

the equipment and outfit of the ship; as, in fact, this sum includes divers items entering into both the sums valued afterwards, and that there is reason to retain of them only the expense of the provisions, equipment and outfit, and advance to the crew for 7,200 francs, to wit 7,200.00 3517

As there is ground to admit the loss of the effects, furniture and money of the captain and crew, amounting, according to the experts, to 9,550 francs f9,550.00

As well as the expenses of the Consul after the collision had been 1,584.55

And as, finally, the owner and the captain have received from the loss of their ship a damage which can be estimated at 2,000.00 3518

Total, 70,334.55

Inasmuch as the faults of the parties being equal, this loss must be equally borne by each of them to wit, by halves, or 35,167.25 francs.

DETERMINATION.

The Tribunal, determining in the first instance, says and judges that the collision between the *Tellus* and the *Bretagne* took place as a result of reciprocal and equal faults of the two captains, who are in consequence responsible each for one-half; 3519

Fixes the amount of the loss and damage suffered by the *Tellus*, at the total sum of 70,334.55f.

Condemns Commander DeJousselin, and the Compagnie Generale Transatlantique by privilege upon the *Bretagne* to pay to Captain Thorb-jornsen of the ship *Tellus*, the sum of 35,167.25f for the half of the loss, with legal interest.

3520 Deprives Captain Thorb-jornsen of the remainder of his demand.

Makes one sum of the expenses which are to be borne one-half by each of the contestants.

And, inasmuch as Captain Thorb-jornsen is a foreigner, and shows no solvency in France, says that there is no ground to order the provisory execution of the present judgment without security.

(Signed) AUGUST TOUSSAINT and
[SEAL] ALBERT SAVARY.

Captain Thorb-jornsen, (M. Gosset)

v.

3521 *Compagnie Gencrale Transatlantique (M. Marais)*

28 OF JANUARY, 1889, COURT OF ROUEN, (FIRST CHAMBER).

Presiding: M. CORVET,
M. MAIRET,
General Advocate.

The Tribunal of Commerce at Havre, rendered on the 20th of December, 1887, the judgment by which, while declaring that the speed of the steamer *La Bretagne*, Captain de Jousselin, was excessive, and declaring at the same time that the sailing ship *Tellus* had committed fault by changing her course,

3522 The Tribunal consequently decided that the collision was due to reciprocal fault of the two captains, and that, therefore, the loss of the *Tellus*, which sank as the result of the collision, should be borne in equal portions by the Compagnie Generale Transatlantique and Captain of the *Tellus;*

The Compagnie General Transatlantique and Captain Thorb-jornsen, ex-commandant of the *Tellus*, have respectively appealed from this judgment.

DECISION. 3523

As to form, joining appeals and determining by one and the same decree.

AS TO THE MERITS.

Inasmuch as in the judgment of the 20th of December, 1887, the Tribunal of Commerce, Havre, has accurately drawn from the documents in the suit the exposition of the facts on which it had to decide, as there is ground, therefore, to adopt herein the considerations set forth in the decision appealed from. As only when it is the question of estimating the force of these facts so set forth, the 3524
first judge has drawn from them certain deductions which better controlled by the elements of the debate, than by those of the proceedings had, cannot be maintained.

As if it is demonstrated, even to a certainty, that the steamer *La Bretagne*, by navigating in an intense fog at almost her maximum speed, has committed a fault and incurred a responsibility, it is not demonstrated, as the Tribunal judges, that the ship *Tellus*, which was on the starboard tack, by coming into the wind and changing her course, was in fault by the application of the International Rules of 1884. As Articles 14 and 17 especially, 3525
cannot be declared applicable, except between ships which can see each other, but as in a time of intense fog, as in this case, its application which has become as a matter of fact impossible, or not within the scope of the will, cannot be made; as articles 10, 23, 24 of this Regulation leaves subsisting, on the contrary, in the exceptional occasions of navigation which they point out, the duty of captains to draw inspiration from the necessities of the situation and the measures which those necessities demand;

3526 Inasmuch as the Tribunal seems to admit that the *Tellus* being on the starboard tack, ought to have done nothing; as it must have been then in fact certain to her, by perceiving the sound of the siren of the *Bretagne,* that there was present a ship two or three points forward, but

Inasmuch as that is a wholly gratuitous supposition; as the Tribunal has thus failed to recognize what results from the reports of the inquest and the experience of people competent on this subject, that is, that the sound of a siren in a time of fog is not sufficient to give a certain indication; as this is what appears in the case, and which the proceed-
3527 ings of the suit reveal.

Inasmuch as the Tribunal has besides brought itself to acknowledge that if the *Tellus* had changed her course, it was only because she wished to avoid the danger which she knew to exist; that having in fact previously met fishermen, she had feared that she was meeting another, and deviated from her course in the fog only as a result of the past experience and of this fear.

Inasmuch as the Tribunal, in order not to take into account this prudence, considers that that was only an eventual and problematical danger, whereas the captain of the *Tellus* knew, by the sound which he heard, the existence of a certain
3528 and present danger to which he exposed himself by changing his course; but

Inasmuch as here is again the same conclusion wrongly drawn from a fact which is not demonstrated, and which even the result of the inquest which had been had victoriously contents on the contrary:

Inasmuch as the same reply is to be made to the argument drawn from the fact that the *Tellus* must have necessarily heard again and more clearly the

sound of the siren on the *Bretagne,* since it was un- 3529
ceasingly approaching;

Inasmuch as especially with reference to the intensity of the fog, the proof is decisive, and as the excessive speed in time of fog in the ship *La Bretagne* has been justly imputed as a fault to Captain de Jousselin, and as there is reason to adopt as to this the considerations of the judgment;

Inasmuch as the measures taken by Captain Thorb-jornsen, in view of the dense fog and the circumstances of navigation, as his sea report relates, were those which he ought to have taken, and which prudence advised, as if, on the day of collision, at 11.20, he had seen the mast head light 3530
and the port side light of a steamer at a point aft of amidships on the starboard, it must be held at the same time that this steamer which was no other than the *Bretagne,* had so great a speed that at the end of one or two minutes from the moment when the lights could have been perceived, the *Tellus* was struck on the starboard side in the middle of the ship, and received a wound of twenty to thirty feet, crossing towards her bow;

Inasmuch as, as to the claim of De Jousselin, produced on many occasions, and always maintained, that there was not a thick fog but frequent clearings up, what is stated in the two sea reports, and the 3531
inquest, and the very circumstances of the collision, admitted on both sides, answer it and justify the negation of the claim;

Inasmuch as in their report, it is true, the experts appear to contest on one point the affirmations of the sea report of Captain Thorb-jornsen, but nevertheless, and contrary to their opinion in the cause, it is necessary to maintain in accordance with the declaration of the sailors and with the statements made many times in similar cases, that the sound of the siren has been heard only at a late

3532 moment, and that the direction of it has remained, thanks to atmospheric circumstances, insufficiently indicated, and as the captain and the sailors of the *Tellus* were themselves led into error without fault on their part, but by the physical effect which is even here demonstrated:

Inasmuch as the facts of the case and the action taken by the two captains can be considered to be as follows, in view of the responsibility incurred:

Intense fog;

Impossibility of the ships to see each other, except when the distance is too small to be able to avoid each other.

3533 The navigation of the *Tellus* warranted by prudence and justified because those on board knew of the presence of fishermen in that place.

The speed of the *Bretagne* excessive, and a direct relation between this excessive speed and the accident to which it gave birth, and which without this fault committed by Captain de Jousselin, would not have been produced.

As to what concerns the value of the Tellus, *and the amount of the damages.*

Inasmuch as from the information given and the documents produced by the experts, it results that not resting on the value estimated for the purpose of insurance, which is not sufficiently justified, and
3534 appears even notably beyond the real value, there is also no reason to depend upon the particular value written out by the Judge in his decision, without bringing to that the justification which is applicable and acceptable; that there is a reason, on the contrary, to accept the valuation determined by the experts for the same reasons which have served as a basis for the valuation of the experts, and that it is, therefore, the sum of 82,000 francs which ought to be awarded.

As to the surplus of the loss and damages, and

as to the account made up in the judgment on this head, 3535

Adopting the reasons of the decision appealed from, and confirming it on this point,

On the other items and demands,

Inasmuch as they are not justified, and that there is no ground to determine about them.

As to expenses:

Inasmuch as that they are a charge on the party who is in fault,

For these reasons

The Court in form joins the appeals, determining by one and the same decree.

On the merits, correcting in part and confirming 3536
the rest, says and adjudges:

Articles 14 and 17 are without application in the condition of the cause.

Says that in view of the fog and the impossibility of the ships to see each other, and the particular facts of the cause, it was only in the words of Articles 13, 23 and 24 that the captains were bound to look for their rule of conduct, and that it was then in the perils and necessities of navigation that they ought to have sought their inspiration.

Says that the manoeuvre of the *Tellus* indicated by prudence itself has not constituted a fault, and has not brought about the collision, but there was on the contrary, a contravention by *La Bretagne* 3537
by her excessive speed in time of intense fog;

Says, especially, that this speed of the *Bretagne* which has not left the ship *Tellus* time to escape, has been the exclusive and certain cause of collision.

Says and adjudges that Captain de Jousselin and the Compagnie Generale Transatlantique are bound by the fault of the Captain of the *Bretagne,* and by the same responsibility, and must be conjointly and *in solido* condemned and with privilege on the *Bretagne.*

3538 Fixes at 82,000 francs the value of the *Tellus*.

Confirms as to the surplus, and for the fixing of the other damages, and the account of what is due, the decision appealed from, with the undisputed reductions made by the first judges.

Consequently discharges Captain Thorb-jornsen from the condemnation given against him.

Condemns Captain de Jousselin and the Compagnie Generale Transatlantique to pay the sum above mentioned, of 82,000 francs.

Rejects all other demands and conclusions.

Condemns in the same terms above set forth Captain Jousselin and the Compagnie Generale Trans-
3539 atlantique to all the costs of the first instance and the appeal.

Rejects all other demands and conclusions.

Petitioner's Exhibit 12 1/2, Oct. 11/01.

THEO. COMMEAU,
Carpenter and Builder.
Manufacturer of
BARBERS' FIXTURES,
STORES FIXTURES
and FINE CABINET WORK.
3540 Made to order.
Factory and Salesroom: 449 Hudson St.
New York.

Petitioner's Exhibit 13, Oct. 11/01. 3541

Envelope:

CHAMPAGNE

Stamp cancelled

Mr. Edward Laisne
Mecanicien 3542
c|o French dock Pier 42
North River City.

Letter:

NEW YORK, 2-28-99

MR. EDWARD LAISNE
Cie. Gle. Trans. N. Y.

DEAR SIR:

Will you be able to be absent for some hours & come to see me. Take your breakfast or dinner with me informally.

Ever since I have seen you I have been almost ill, but I hope that now I shall be well now.

We will talk a little of our shipwreck. Greetings. 3543

T. COMMEAU,
351 Hudson St.

It is 4 blocks from the Co.

3544 **Extracts from protocols of proceedings of the International Marine Conference, held in Washington, D. C., U. S. A., 1889, Vol. 1.**

WASHINGTON,

GOVERNMENT PRINTING OFFICE.

Page 94. Dr. Sieveking (Germany) In fact I think it may be said that in general the principle of our fast steamers in plying the ocean is that in thick weather they are to go at as fast a speed as they can. That is a principle which certainly is
3545 not sanctioned by us, nor ought it to be sanctioned by the law; but its practice is followed.

Captain Mensing (Germany), page 96, I do not believe that there is any captain afloat who would like to go at full speed in a fog; but ships are built of which the public and the owners and the world expect speed. They expect them to go fast. Now, what are these ships going to do? I would like to hear of any Company that would give such stringent laws as Mr. Goodrich and the eminent delegate from Great Britain have told us about. If there is any law or any company that has given an order to their captains to go at a speed which is just sufficient to keep steerage way, I would like to hear of
3546 it. I refer now to some researches which have been going on in Great Britain by the Royal Society of Arts. These men have taken the trouble of having before them a large number of English shipping captains and English firms, giving to them the promise at the same time that they would not publish their names and asking them to give the results of their experience. So far as I know the overwhelming number of these ship-owners, masters and captains have said that ships were going at full speed—that is to say, practically at full speed.

Page 98. Mr. Goodrich, (United States). Of course I know that captains disobey it. (The Rule of moderate speed in a fog). I know that every man who crosses the Atlantic knows that they ride through a fog at full speed. Once in awhile they do check their speed a little. I remember counting the revolutions of a steamship this summer. I think the full speed was 63 revolutions, and I believe at one time that, in going through a dense fog, they did get down to 60 revolutions. 3547

Page 417. Capt. Richard, (France). We have among us in this Conference a considerable number of Captains of the merchant navy who have commanded vessels renowned for their speed. Let them tell us how they have understood the expression "moderate speed" in a fog. Let them explain what moderation they have made under the conditions provided for by Article 13 in the engines of those vessels. What was the reduction of speed in knots? I fear that they have generally diminished by only one or two knots the speed of the engine, in order to enable then to inscribe in the log book "diminished speed." It must be taken into account, and the more so as habit has become a practice, notwithstanding Article 13 and the expression "moderate speed." 3548

Mr. Flood (Norway), page 425. The greatest danger of navigation I know of, is during a heavy fog to fall in with one of the ocean racers or greyhounds, as they are fitly called, who recklessly, with full speed, or even with what they call moderate speed (1 knot or 2 knots less per hour, or a few insignificant revolutions less per minute), traverse the ocean under the well-known system that has got its rather cutting characteristic in the following expression, said to have come from the bridge of one of those crack steamers; "Heaven, hell, or New York in seven days, is my order." 3549

3550 They speed along like a thunder-bolt, and if they strike a lonely vessel in the fog, they are prevented by their own speed from rendering assistance or saving life.

Mr. Verney (Siam), page 439. I wish to direct the attention of the Conference to one fact upon which I believe we are all of us unanimous, and that is, that this rule has completely broken down. Perhaps some of the members might be inclined to dispute that; but the best test of the success of a rule is whether it is generally obeyed. Has this rule been obeyed? I do not think a single member of this Conference has for a moment asserted that
3551 this rule has been properly and fairly obeyed. We have all agreed that we know what moderate speed means perfectly well. I think that every gentleman who spoke, certainly every seaman who spoke this morning, has practically admitted that the rule as it stands has been constantly, continually, and persistently disobeyed.

Dr. Sievcking (Germany), page 441. * * * and to give the rule a wording which makes it quite clear that the Conference does entirely and most seriously disapprove of what is now the general practice of running in a fog at a speed which is a maximum speed.

3552 *Captain Richard, (France), page 445.* In all countries where these questions of fog and snow have been a matter of study, what have been the instructions given to the military navies? I think that in England, under those circumstances, the speed is limited to four or five knots. In our navy we must not exceed six knots.

* * * * * *

Page 447. Moreover, those infractions occur, but they are not met with in France alone. To judge by the duration of sea voyages, vessels which leave Liverpool and Hamburg to cross the Atlantic

must also be accused thereof. All navigate, I think, 3553
in the same manner, * * *

(Endorsed)—Extracts from Protocol of Int. Mar. Conference.

Respds. Ex. 19 for Ident. Oct. 11/01.

(Article in the *London Times* of Wednesday, November 16, 1898, on page 14.)

NORTH ATLANTIC TRACKS.

A conference was held yesterday at the Savoy 3554
Hotel, under the chairmanship of Mr. Ismay, of the White Star Line, to discuss the important subject of North Atlantic tracts. The different companies interested in the trade between Europe and the northern ports of America were represented as follows:—White Star—Mr. Ismay, Mr. Sanderson, Captain Murray, Mr. Concannon (acting as secretary); Cunard—Mr. Jardine, Captain Watson; American and Red Star—Mr. Taylor, Captain Shackford; Elder, Dempster—Mr. Jones, Mr. Bond, Captain Evans; Atlantic Transport—Mr. Torrey, Captain Robinson; Wilsons—Mr. C. H. Wilson, M. P.; North German Lloyd—Captain (name partially erased and illegible); Hamburg- 3555
American—Dr. Nolte, Captain Poplis; Netherlands-American—Mr. Wierdsma; French Line—Mr. Fanet, Captain Santelli; Furness—Sir C. Furness.

It will be seen from the following report that, as a result of the conference, two outward and two homeward tracks were agreed upon for use during two distinct periods of the year—i. e., during the ice and fog season, and during the season when ice is not usually met with and clear weather prevails.

3556 The regulations adopted will now be circulated, and in the interests of safety it is hoped that they will be recognized by all vessels trading to North America, as well as by the fishermen on the Newfoundland Banks. The tracks which have been followed by the leading Transatlantic lines have never before been so thoroughly discussed and generally accepted, and the result of the recent conference must therefore be of considerable interest to thousands who annually cross the North Atlanic.

Mr. Ismay, in his opening address, said the very great importance of the object sought to be achieved was his excuse, and he considered it an ample one,
3557 for having been instrumental in bringing them together on that occasion. That the subject of tracks for steamships engaged in the North Atlantic trade was considered one of paramount importance was sufficiently evidenced by the presence there that day of representatives of steamship companies of the principal maritime nations of the world, to one and all of whom he desired to tender his thanks for their spontaneous and favourable response to the call which had been made. The matter of tracks or lane routes on the North Atlantic was an old one, dating back for many years, and one which had in the past given rise to much controversy between
3558 experts, and, though he was not so sanguine as to believe it possible that tracks could be devised which would be in accord with all views or which would meet satisfactorily all points which could be raised, he was encouraged to hope, if he might judge by the expressions of opinion which had already reached him from many interested, that they met there that day with every prospect before them that a reasonable measure of success was well within their reach. Possibly it was known to them that the subject of tracks or lane routes was one in which he had for many years been particularly in-

terested, but it was not his intention to refer to the 3559
past history connected with this matter further than to say that as far back as 1876, realizing the immense advantages to be gained in the direction of safety by confining the eastbound and westbound movement of the large fleet of steamships even then in existence to certain defined routes, his then firm, Ismay, Imrie and Co., addressed the following letter to the secretary of the North Atlantic Steam Traffic Conference on January 1 of that year:—

"White Star Line, Liverpool, Jan. 1, 1876. Gray Hill, Esq., secretary North Atlantic S. T. Conference. Lane routes.—Dear Sir,—Referring to the failure to agree upon an international rule obliging 3560
all steamers passing between Europe and North America to follow fixed lane routes (which, personally, I much regretted at the time), and having since given a good deal of consideration to the matter during four transatlantic passages made within the past 18 months, I have determined, as far as practicable, with this company's steamers, to follow Maury's steam lanes, and would suggest that a conference be called, to consist of a nautical and lay representative from such of the European lines as may respond to an invitation to be issued by the North Atlantic Steam Traffic Conference, and that a committee thereof make a joint report to be unani- 3561
mously adopted, the responsibility of non-agreement to rest with those who do not accept the committee's recommendation. The lanes, if generally adopted, would, I think, materially lessen the risks of collision and of ice. Pending the discussion of this subject on the part of the conference the commanders of the White Star steamers are instructed to follow the routes named. I am, &c., THOS. H. ISMAY."

Two years later, with the same object in view, they wrote to the President of the Board of Trade

3562 at considerable length urging action in the form of a recommendation of uniform routes on the part of that Department of her Majesty's Government. No such action was taken, but many of the leading steamship companies laid down lane routes of their own, which, though differing somewhat, were, on own, which, though differing somewhat, were, on the whole, well adhered to. It was not, however, until some years later, in November, 1891, that any substantial progress in the direction of uniformity was made. In that year the principal mail and passenger-carrying steamship companies, as a result of much discussion, agreed on a so-called northern
3563 west and eastbound route, and a southern west and eastbound route, the former being made operative from the middle of July to the middle of January, and the latter during the remainder of the year, these being especially designed to keep the steamships as clear as practicable of the ice and fog which experience had taught were liable to be encountered on any more northerly route at that season. These routes, however, partook strongly of the character of a compromise, and were slightly amended from time to time, while the co-operation of a constantly increasing number of steamship companies was secured. But of late years it was
3564 found in practice that the so-called southern route did not accomplish much that it was designed to do, with the result that further negotiations were entered upon this year, and the track regulations adopted which are now in operation. These divide the year into four periods, for which three westbound and three eastbound tracks are provided, designed to keep the vessels going in opposite directions a safe distance apart, the most southern of these tracks being in operation during what is considered the height of the ice season. He thought they would all agree with him that the frequent

sightings of ice and the prevalence of fog this year 3565
on the northern track, to which the vessels returned on July 15, fully justified a reconsideration of the dates for making the changes in the different routes. While considering this feature of the matter, he would strongly urge that if, in the opinion of experts present, by whom laymen must be very largely guided, the track rules could be modified by returning to the former principle of having only two—that was to say, a northern and a southern track—and by dividing the year into two periods instead of four, as at present, a very material advantage would be gained, as by this means the whereabouts of the Atlantic liners at given seasons 3566
of the year could be more readily and accurately, and therefore more widely, known to the various interests to which that information might be of value. He should like to mention some other points for consideration, in regard to which he was aware that certain gentlemen present held, and he thought rightly, strong views:—(1) What steps could be taken to secure the co-operation of and adherence to such tracks as might be now agreed upon by the lines running to United States ports other than New York, and likewise of the owners of vessels irregularly employed in the North Atlantic trade, with a view to diminishing thereby the risk of col- 3567
lision? (2) Was it advisable to invite, with this object in view, the assistance of Governments, insurance companies, or protection clubs? (3) In what way could they hope to minimize the risk of collision in fog with the fishermen to be found in great numbers on the Grand Banks during a portion of the period when the northern route was followed by Atlantic steamships? He had only to add that, as a basis for discussion, and with an entirely open mind, he had submitted certain proposed tracks, the important features in connexion

3568 with which were:—(1) That there are only two eastbound and two westbound tracks—viz., northern and southern. (2) That on the suggested southern track the point of divergence is placed two degrees east of that now adopted. By this change it is sought to keep the ships clear of that portion of the route where ice and fog are most frequently to be found, and thus to accomplish much that was looked for by following the present extreme southern track, which, besides being open to objection on account of the excessive heat, he feared hardly recommended itself to the owners of outside tonnage, whose co-operation it was hoped to secure.
3569 (3) They would see it was suggested to defer going on the northern track for a month later than is now the rule, or until August 15. In making these suggestions, however, he desired to state that the White Star Line was prepared to adopt any modifications as to routes or dates which, as a result of that discussion, might be found to be desirable in the interests of that safety which they were all anxious to secure. But he begged their favourable consideration—with the object of ensuring for the adopted tracks the greatest possible efficiency—of the suggestion that there should be only two instead of three tracks, necessitating only two changes in the year instead of four as at present.

3570 Eventually the following track rules were agreed to:—

"WESTBOUND.

"From January 15 to August 14, both days inclusive.—Steer from Fastnet, or Bishop Rock, on Great Circle course, but nothing south, to cross the meridian of 47 degrees west in latitude 42 degrees north, thence by either rhumb line or Great Circle, or even north of the Great Circle, if an easterly current is encountered, to a position south of Nan-

tucket Light Vessel, thence to Fire Island Light 3571
Vessel, when bound for New York, or to Five Fatham Bank South Light Vessel, when bound for Philadelphia.

"From August 15 to January 14, both days inclusive—Steer from Fastnet, or Bishop Rock, on Great Circle course, but nothing south, to cross the meridian of 49 degrees west in latitude 46 degrees north, thence by rhumb line, to cross the meridian of 60 degrees west, in latitude 43 degrees north, thence also by rhumb line, to a position south of Nantucket Light Vessel, thence to Fire Island Light Vessel, when bound to New York, or Five Fathom Bank South Light Vessel, when bound for Phila- 3572
delphia.

"EASTBOUND.

"At all seasons of the year, steer a course from Sandy Hook Light Vessel, or Five Fathom Bank South Light Vessel, to cross the meridian of 70 degrees west, nothing to the northward of latitude 40 degrees 10 minutes.

"From January 15 to August 23, both days inclusive.—Steer from 40 degrees 10 minutes north, and 70 degrees west, by rhumb line, to cross the meridian of 47 degrees west, in latitude 41 degrees north, and from this last position nothing north of the Great Circle to Fastnet, when bound to the Irish 3573
Channel, or nothing north of the Great Circle to Bishop Rock, when bound to the English Channel.

"From August 24 to January 14, both days inclusive.—Steer from latitude 40 degrees 10 minutes north and longitude 70 degrees west, to cross the meridian of 60 degrees west in latitude 42 degrees 0 minutes north, thence by rhumb line to cross the meridian of 45 degrees west in latitude 46 degrees 30 minutes north, and from this last position nothing north of the Great Circle to Fastnet, when bound to the Irish Channel, and as near as possible

to, but nothing north of, the Great Circle to Bishop Rock, always keeping south of the latitude of Bishop Rock, when bound to the English Channel.

"GENERAL INSTRUCTION.

"When courses are changed at the intersections of meridians any time before or after noon, you will note in your logs both distances to and from the meridians that the ship has sailed from noon to noon, and not the distance from the position at noon the day before to the position at noon the day after the meridian is crossed.

"The above tracks have been agreed to by lines stated, but French Line cannot go north until October 15, owing to instruction of their Government."

Respondent's Exhibit No. 20, October 11/01.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of liability.

GENTLEMEN:

You will please take notice that you are hereby required to produce on the trial of this cause all

logs, whether logs of the engine room or of the 3577
deck, kept on board of the steamers of the petitioner during their voyages between Havre and New York, for three years previous to July 4, 1898. Also to produce copies of the depositions taken before Commandant Aubert on the investigation by the Minister of the Marine, in reference to the loss of the *Bourgogne*, to wit: the deposition of Corre, who was at the siren; Pironnec, who was an oiler, and of the witness named Voisin, and also a copy of the testimony of Edward L'Airis, examined as a witness on behalf of the petitioner on the trial of the suit in the English Court of Admiralty between the petitioners and the owners of the *Cromartyshire*. And 3578
in case of your failure to produce on the trial the aforesaid papers, secondary evidence of the same will be offered to the Court.

Dated New York, April 17, 1901.

Yours, &c.,
BENEDICT & BENEDICT,
Proctors for Claimant Deslions.

To JONES & GOVIN, Esqs.,
Petitioner's Proctors.
A. GORDON MURRAY,
Proctor for W. C. Perry, *et al.*

(Endorsed)—Notice to produce depositions of wit- 3579
nesses on Foreign trial and investigation.

3580 **Petitioner's Exhibit 14, October 16, 1901.**

PERSONNEL EMBARQUE A BORD DE "LA BOURGOGNE."

Etat Major Pont.
(Deck Officers.)

Deloncle, Captaine.
Dupont, 2me do.
Pichard, 1er lieutenant.
Delinge, 2me do.
Rempler, 3me do.
Durand, Commissaire.
‡Scol, Sous do.
3581 Deplech, Docteur.

Etat Major Machine.
(Engine Room Officers.)

Dalido, Chef mecanicien.
Brissac, 2me do.
Gautier, 3me do.
‡Laisne, 4me do.
‡Le Bourch, Aide do.
Marquer, do. do.
Haglon, do. do.
3582 ‡Deprez, Electricien.

Maitres.
(Boatswain.)

‡Petiot Jean, Maitre d'equipage.
‡Batard Pierre, 2me do.
Lecomte Lucien, 2me do.
Crestey Jean, Maitre Charpentier.
Feston Louis, Captaine d'Armes.

Gobiers.
(Topmen.)

‡Le Bris, Yves,
Le Coz, Hippolyte.

Matelots.)
(Sailors.)

Le Bitoux, Joseph.
Le Louarn, Joseph.
‡Allain, Silvert.
‡Le Maguer, Desire.
Poupin, Jean.
‡Valer, Fortune.
‡Jacob, Joseph.
Le Gall, Joseph.
‡Ruffet, Pierre.
Moyon, Eugene.
‡Feutren, Joseph.
‡Festou, Elismore.
‡Gendrot, Victor.
Adam, Yves.
Le Grossec, Louis.

Blouin, Thidore.

Allain, Kimour.
‡Le Breton, Pierre.
‡Denis, Rene.

‡Person, Vincent.

‡Le Parc, Guillaume.

Duval, Louis, Chef timonier.

Gautier, Georges.
#Deval, Maurice.
Festou, Louis.

Timoniers
(Signalmen.)

Novices.
(Young sailors.)

#Corre, Louis.
Luco, Francois.
Vaudelet, Francois.
#Ollivier, Yves.
Real, Achille.

#Le Faucheur, Auguste.
Flohic, Julien.
#Bedfer, Jules.
Diven, Felix.

N. B.—The names of the crew marked this # were saved.

3583

3584

Mousses.
(Cabin Boys).

Lherec, Yves.
#Dambry, Andre.

Chauffeurs (suite).

#Fortin, Charles.
#Salaun, Jean Marie.
#Le Loome, Jean Louis.
#Crostec, Jean.
#Le Gall, Yves.

Iers Chauffeurs.
(Leading Stokers.)

Raoul, Pierre.
Traval, Guillaume.
#Proud'hom, Toussant.
#Le Jean, Jean.

Thomas, Yves Marie.
Cojean, Pierre.
Lemeur, Francois.
#Le Petit, Jean.
Guennou, Jean.
#Refloch, Jean.
#Lheveder, Louis.

3585

Le Coadon, Joseph.
Maubouchon.
Le Corre, Jean.
Huon, Francois.
Pivant, Eugene.
Guillem, Henry.

#Guegan, Louis.
#Andrain, Joseph.
Paugham, Yves.

Graisseurs.
(Greasers.)

#Bernard, Pierre.
#Richard, Pierre.
#Helin, Joseph.

#Coute, Louis.
#Allain, Joseph.
#Martin, Henry.
#Coquard, Pierre.
#Nevot, Joseph.
Rion, Jean.

3586 Richard, Alexandre.
Prado, Auguste.
Donaud, Theophile.
Magdeleine, Gustav.
#Calvary, Jean.

Chauffeurs.
(Stokers.)

#Escati, Joseph.
#Beguet, Yves.
Rallec, Yves.
#Rallev, Vincent.
Achant, Yves.
#Jehannot, Pierre.
Burlot, Pierre.
3587 Bozec, Antoine.
#Mainguy, Yves.
#Le Julien, Louis.
#Prat, Yves.
Le Gall, Francois.

#Hamel, Francois.
Rumiac, Jules.
Berrigo, Martin.
Le Lael, Leopole.
#Hallequin, Joseph.

Soutiers.
(Bunkermen.)

Minard, Emile.
Tremel, Yves.
#Blouin, Jean.
#Le Marec, Jean.
#Pironnec, Julien.
Riou, Jean.
#Coulet, Francois.
#Bideau, Charles.
Le Chaffodec, Yves.
#Mainguy, Marie.

N. B.—The Names of Crew marked thus # were saved.

Soutiers (suite).

#Tassel, Yves.
#Kerandren, Guinoli.
Quermerch, Joseph.
#Le Gardien, Pierre.
3588 #Le Thiec, Alexis.
Le Coz, Hyacinthe.
#Pironnec, Joseph.
#Nicholai, Francois.
#Baille, Elie.
#Le Dantoc, Auge.
#Tanguy, Hippolyte.
Pommerel, Yves.
Guyomard, Jean.
Voisin, Pierre.

Personnel Civil (suite).

Desgraz, Charles, Circur.
#Deveaux Etienne, do.
Le Conte, Edmond, Interprete.
Linanda, Frederic, do.
Chantillon, Charles, do.

Personnel Civil (suite).
Servants, Waiters, &c.

Quintin, Jean, Interprete.
#Dolorood, Henry, do.
Troadec, Louis, ler Garcon.

#Le Mescam, Allam
#Malzorn, Jean.
#Larcher, Yves.

Personnel, Civil.
(Stewards, Cooks).

Nouveiler, Julien, Maitre d'Hotel
Caillot, Eugene, do.
Bridot, Amedi, Pourvoyeur.
#Thebaut, Louis, Cuisinier.
Lecuyer, Auguste, do.
Deschamps, Louis, do.
Rebindame, Francois, do.
Libault, Emile, do.
Lemarie, Eugene, Aide de Cuisine.
#Bijon, Alexandre, do.
#Paulmier, Emile, do.
Henry, Louis, Boulanger.
#Fourage, Jean, do.
Catin, Francois, Boucher.
Semblat, Henri, Garcon.
Vogt, Charles, do.
Tura, Auguste, Sommelier.
#Nivault, Alphonse, do.
Beyer, Louis, Coiffeur.

#Hiret, Charles, Infirmier.
Lefrancois, Henri, Cambusier.
Bibet, Paul, Patissier.

Personnel Civil (suite).

Day, Frederic, do.
Blomfield, Auguste, do.
Gautier, Louis, do.

Le Guern, Yves, do. 3589
Heauline, Alfred, do.
#Gosset, Simon, do.
Roverch, Jean, do.
Roblin, Leopold, do.
#Lucas, Francois, do.
Bermer, Paul, do.

#Lacroix, Charles, do.
Kempf, Louis, do.

Daudry, Maume, do.
#Loyen, Francois, do.
Douarin, Charles, do.
#Sauvage, Caston, do. 3590
#Lepert, Leon, do.
#Dufour, Jacques, do.

#Chevalier, Henri, do.
Bourdon, Louis, Garcon.
#Cussy, Edmond, do.
Guerin, Adolphe, do.
Le marrec, Francois, do.
#Boisdellec, Ollivier, do.
#Goazampis, Pierre, do.
Gallier, Victor, do.

Leherre, Gabriel, Garcon.
Leherquier, Victor, do. 3591
#Bouchard, Alexandre, do.
Berjuin, Emile, do.

Denis, Emile, do.
Viringue, Grille, do.
Collard, Louis, do.

Personnel Civil (suite).

Belliard, Raymond, do.
Lefebvre, Jules, do.
#Claer, Camille, do.

3592	Limare, Gustave, do.		#Thomas, Eugene, do.	
	Hennebert, Arthur, do.		Lecaude, Gaston, do.	
	#Chauvin, Prosper, do.		Yater,	Stewardesses
	Delmarre, Fernand, do.		Debatin,	
	#Angel, Ernest, do.		Mesnard,	Femmes de Chambre.
	#Hazel, Gaston, do.		Lemonnier,	

N. B.—The names of the Crew marked thus # were saved.

Petitioner's Exhibit 15, October 17, 1901.

MACHINICIEN.

Quart de Service.

3593	Nuf me 'couar.	Dalido.	mort
	Officer de quart.	Gauthier.	mort x
	aide' mecanicien.	Haglon.	d' x
	Graisseur.	Magdeleine.	d' x
	Graisseur.	Donaud.	d' x
	1' Chauffeur.	Traval.	d' x
	1' d'	Pausam.	d' x
	Chauffeurs.	Rallec, Yves.	Cecedi depius a'Cordda Canada.
	d'	Achant.	mort x
	d'	Boxec.	d' x
	d'	LeJulien, Louis.	crt au Harve au service de Ca Ce.
	d'	Portin, Charles.	present.
	d'	Le Petit, Jean.	absent.
	d'	Guennou, Jean.	mort x
	d'	LeCoadou, Charles.	mort x
3594	d'	Maubuchon.	mort x
	d'	Le Corre, Jean.	d' x
	d'	Huon, Francois.	d' x
	d'	Pivant, Eugene.	d' x
	d'	Rion, Jean.	d' x
	d'	LeLael Leopold.	d' x
	Soutiers	Tremel, Yves.	d' x
	d'	Blouin, Jean.	Dededi depuis
	d'	Riou, Jean.	mort x
	d'	Le Chaffodec, Yves.	d' x
	d'	Prionnec, Joseh.	absent.
	d'	Nicolai, Fcs.	absent.
	d'	Voisin, Pierre.	Present.
	Chauffeur.	Calvary, Jean.	d'

Petitioner's Exhibit 16, October 17, 1901.

3595

Officier de quart.		M. Duport Fleury,	pilotin.
	Babordais de quart.		
Pichot	mati	Absent	(Vetteda) y o M.
Duval	chef d'h	x parvulle	
Porre	au chien		
Luce	x		
Vaudlet	mort en alleur		
Le Brix	present		
La Louoine	x		
Alleur	de quart.	dans le madun	(Labrador) 3596
Le Maguer	present.		
Poupri	x	au bessoir	
Valer	present		
Le Gall	x	detache au feut pere	
Moyen	x	en le parvulle	
Blouin	x	de quart au bessoir	
Allair	x		
L. Breton	present		
Donis	x	sauve mal depuis	
Le Faucheur	nevile	present le quart.	a 6 r
(preceding line struck out with lead pencil)			
Pierres	absent	peut etre rigor.	

3597

Petitioner's Exhibit 17, October 17, 1901.

INSPECTION REPORT

OF THE 27TH VOYAGE.

S. S. "La Bourgogne".....Sailing June 18, 1898.

The head Agent of the home port, assisted by the Chief Engineer of the technical service, by the As-

3598 sistant Marine Superintendent and by the Captain shall, as much as possible before the beginning to load, but in any event before the completion of the loading of each steamer, make a general inspection of her, as well as of her motor.

The Agent will satisfy himself at this visit as to whether repairs have been well done, and whether the Steamer is sufficiently provided with everything she needs for the voyage she is about to undertake.

HE SHOULD ASCERTAIN,

1st, The condition of the holds and bunkers; the report of inspection should give the state of cleanli-
3599 ness and the care taken of the bilges, the solidity of and keeping in repair of the ceiling, and platform intended to prevent filth and coal dust from getting down between the frames.

2nd, The keeping in repair of and proper working of all the bilge pumps of the watertight compartments; the report of inspection should give the number of pumps in each compartment, those worked by steam and thoes worked by hand.

The condition of the pump wells and of the strainers of the pumps.

3rd, The keeping in repair and the proper working of the fire pumps; the report of the inspection
3600 should give their means of use in each part of the ship, the number of those which are worked by steam, and by hand, specifying whether the latter are fixed or movable, the condition of the fire hose.

4th, The keeping in repair and working of the sluices of the cargo holds, doors of the tunnel and watertight bulkheads; the report of inspection should state the time required for their complete closing.

5th, The keeping in good repair of the boats and of their out-fitting; the report of inspection should state the nature of their arrangement with a view

to the rapidity of their being put into the water, 3601
and the time required by that maneuvre.

6th, The keeping in repair and proper working of the rudder, as well as of the gear which serves to work it.

7th, The state of keeping up of the submerged part of the hull (quick work) and the date of the last docking.

The head Agent should satisfy himself that the Captain has the following documents, which should be in the archives of each Steamer.

1st, The outfitting plan of the Steamer giving fully: The dimensions of the ship, displacement scale, weight plan, the particulars of the coal bunk- 3602
ers and cargo bunkers, the particulars of the cabins and berths, information concerning the watertight bulkheads, the means of pumping and of fighting fire, the dimensions of the boats, of the spars, of the sails and the principal parts of the motive power, the stability trail, and finally an extract from the table of the results shown by the engines at the official trials.

2nd, A series of drawings accompanying the plan and including: The plan of the accommodations and arrangements. The plan of the engine and boilers. The plan of the piping, as complete as possible, and accompanied by an explanatory legend.

3rd, The order book which should always be writ- 3603
ten up to date.

4th, The complete collection of the logs of the Officers and Engineers since the ship has been in service.

5th, The table of variations of the compass observed at the home port and the collection of the variations observed during voyages.

6th, The insurance policy (if there is occasion). The head Agent should receive all the observations and complaints of the Captain and Chief Engineer,

3604 and cause them to be transcribed on the present Report of Inspection, which is to be signed by the Chief Engineer of the technical service, the Assistant Marine Superintendent, the Captain of the Steamer, and countersigned by the Head Agent.

In the margin: Form 32 Paris—Printing office of the Co. of Publicity, &c., P. Mouillot—88696.

At the bottom: Manager's office—Form No. 75—July, 1874.

INSPECTION REPORT.

1st. Motive power; State whether a trial on the spot has been made and what the results were.	The trials were made the June, 1898.
3605 2nd. Boilers and their accessory parts. Results of inspections and tests if there have been any.	In good condition.
3d. List of spare pieces of the motor. (1) Mention the pieces which are on board.	A spare straight shaft; a small piston, a small slide valve, two piston rods, an expansion connecting rod; sundry shaft bolts; two valve rods; High Pressure and Intermediate Pressure No. 1 and 1 low pressure; one piston Intermediate Pressure No. 1; two cylinder bottoms, High Pressure and Intermediate No. 1; one slide valve Low Pressure; one coupling for broken shaft.
3606	
4th. Cargo holds and coal bunkers.	The cargo holds are in good condition; a thorough cleaning has been

given them during the stay in port and they have been disinfected. 3607

5th. Compartment bilge pumps. State whether they have been worked during the stay in port. Dates of last trils.

There is one bilge pump in each hold, worked by the winches and each compartment is pumped by the donkeys of the engine room. They have all been tried during the stay in port and work well.

6th. Pumps and utensils for fire. Same information.

The engine room pumps force water into the fire piping; winches No. 1 and No. 4 also force water into the same piping; there are besides two fixed Thirion pumps; all have been tried in port and work well. 3608

7th. Sluices and doors of the watertight bulkheads.

The sluices and watertight doors have been inspected with care during the stay in port; all have worked well in the presence of the Assistant Marine Superintendent.

8th. Boats.
Date of last drill.

Ten life boats, two whale boats, four rafts, all with complete outfit, and in good order; the working of the davits upon their supports was gone through with June 16, 1898, in the presence of the Assistant Marine Superintendent; everything works well. 3609

9th. Rudder and apparatus for working same.

A motor under the poop controlled from the

3610 Mention their condition and the inspections made during the stay in port.

bridge; four wheels for steering by hand; a second steam steering machine with independent tiller ropes and sector; a trial of the sundry steering apparatus was made on June 17, 1898, in the presence of the Assistant Marine Superintendent. Everything worked well.

10th. Apparel for anchoring.

3611

Two bower anchors resting upon inclined surfaces; one kedge anchor aft on the poop.

11th. Transmitters of orders.

On the bridge, a telegraph, a gong, a speaking tube give orders to the Engine Room and the telephone at the stern, a telegraph and a speaking tube for the wheel aft; all has been tried June 17, 1898, and works well.

(1.) The spare material of the engine should include spare pieces for the principal parts such as:

3612 screws, piston rod, intermediate shaft, etc., etc.

12th. Hull.

Quick work and bottom.

Was docked Feby. 24, 1898, at St. Nazaire.

13th. Plans and Drawings. Mention those which are not on board.

Plans on board; a plan of the boilers, three plans together of the engine. One plan in the boilers; plan of midship section; accommodations, promenade deck and upper deck; 2nd between decks and holds; longitudinal plan and between decks,

accommodations; sail plan, plan of ship's lines. 3613

14th. Order book. On board.

15th. Logs. On board.

Of Officers and Engineers.

16th. Variations of Compass. On board.

17th. Insurance policy. On board.

18th. Observations and complaints of Captain. None.

19th. Observations and complaints of Chief Engineer. None.

20th. Observations of the Head Agent. None. 3614

June 18, 1898.

The Assistant Marine Superintendent.

(Sgd.) SIMON,

The Chief Engineer of the Technical Service.

(Sgd.) P. LANNES.

The Captain,

(Sgd.) J. DELONCLE.

The Head Agent,

(Sgd.) F. VIE.

(Rubber stamp on each page.) 3615

Geo. H. Stetson,
This
Translation
Guaranteed
Correct.
66 Broad St.,
N. Y.

3616 **Petitioner's Exhibit 28, November 18/01.**

EDWARD S. BROWNSON, JR.,
Attorney and Counselor at Law,
120 Broadway,
New York City.
Telephone 1678 Cortlandt.

MARCH 16, 1901.

EDWARD K. JONES, Esq.,
45 Cedar Street,
New York City.

MY DEAR MR. JONES:

3617 As requested by you in our interview of yesterday, I beg to state the circumstances in regard to Mr. Theodore Commeau of this city, one of the survivors of *La Bourgogne*. On July 2, 1898, Mr. Commeau deposited in the purser's office of that ship $5,000 in bills and specie for safe keeping during that voyage. This money of course was lost with the vessel. The receipt which was given to him was also lost with other papers belonging to him. I understand, however, that the assistant purser counted out the money, and that Mr. Commeau can prove to your entire satisfaction just where the money was drawn from in this city, and that he took the same on board with him.

3618 Mr. Commeau was introduced to me as a worthy man by a very close friend of mine, Mr. A. T. Briggs, Jr., who is the private secretary of Mr. George L. Rives, of this city.

I want to thank you for our friendly talk of yesterday, and I shall be much obliged to you if you will give this matter your attention at the earliest possible opportunity. If there is any further information which I can give you, please let me know.

Yours very truly,
EDWARD S. BROWNSON, JR.

3619

Respondent's Exhibit 29, November 19/01.

STATEMENT OF ALBERT GAIDOT,

One of the Passengers Saved, From the Courier des et Unis of July 9, 1898.

M. Albert Gaidot, agent of the New Home Sewing Machine Company, 28 Union Square, New York, who was going to Paris to represent that house there, has given a detailed recital as to the collision. He has had much difficulty in saving himself, and his recital seems in no way exaggerated, as are evidently the stories told by some of the passengers, 3620
who appear animated by a desire to represent all the men of the crew as assassins.

While admitting that certain of the crew have been able to save their lives at the expense of those of other persons while they were in the water, M. Gaidot says that until the moment when the steamer sank, Captain Deloncle, his officers and his crew, have seemed to do all that was in their power to save as many people as possible.

According to M. Gaidot, Captain Deloncle stayed upon the bridge of the steamer until the last moment, seeking to direct the movements of his officers, and he made no effort to save his own life, 3621
sinking with the steamer.

When the collision occurred M. Gaidot was asleep in his berth, in the second cabin. He dressed himself in haste, and went on deck, where, as far as he could, he aided the crew in putting into the water the lifeboats and the rafts. It appears from his recital that he was more calm than many of the passengers, and the reason of that is, without doubt, that he had already been in an accident of the same kind. During his three years of service in the French Army he had also learned to "manœuvre

himself alone," as soldiers say. The following, in substance, is what this passenger has related:

"When I came on deck the captain was on the bridge, giving his orders to the crew. He was perfectly calm, and succeeded in having a great amount of work executed by the crew, which was composed principally of Frenchmen. One cannot give too great praise to his officers, who all have been swallowed up with their commander.

"The order was given to put in the water the boats and the rafts, but in consequence of the intense fog which reigned, and also because the mechanism for dropping the boats did not act as well as it ought to have done, probably because it had not been used for a long time, a certain delay occurred in the putting of these boats into the water. I think there were on the steamer twelve boats. But those on the starboard side, the side which had been struck, could not be used, except, perhaps, one or two, because they had been damaged by the collision.

"When the boats had been put in the water there was a real crowding to take place in them, and passengers in terror leaped into the sea, with the object of reaching the boats and being in the number of those that were saved. I am one of those who leaped, and I succeeded in getting into one of the boats. I afterwards helped other men into it. Finally our boat contained fifty-seven men. For the safety of those who were on board it was impossible to take any more.

"We got into the boat a little before six o'clock, and we drifted until about eight o'clock, when we were picked up by the English three-master *Cromartyshire*. The most part of the men of the crew and of the passengers who had already arrived on board of the *Cromartyshire* left that ship again in the boats and made all efforts to save those who

were still floating on the water. It is in this way 3625
that many of the survivors have been picked up.

There was on board life preservers in a large and sufficient quantity for all the passengers and the crew, but I do not believe they were of much use to those who had put them around them. In reality I saw many people rid themselves of the life preservers after they were in the water, preferring to swim and run the chance of being picked up by those who were saving.

"The most part of the passengers have been drowned because the boats have upset when they were once in the water, as a consequence of the foolish haste of everyone to seek to save himself." 3626

M. Gaidot believes that many first class passengers have been wounded and others probably killed by the collision. He says that the accident took place about five o'clock in the morning, and that, as far as he can judge, the *Bourgogne* sank about three-quarters of an hour afterwards.

Besides the praises which he gives to the captain and the officers in general, M. Gaidot says that the Chief Engineer, M. Delido, merits also the greatest praises, for he remained at his post at the engine, directing the attempt made to work the pumps. When the steamer sank the Chief Engineer and his assistants were at their posts, as well as the commandant and the other officers. 3627

3628 (Copy.)

Petitioner's Exhibit 34, December 28, 1901.

Le_____189

COMPAGNIE GENERALE
TRANSATLANTIQUE

Exploitation

RAPPORT DU CAPITAINE

LIGNE d_____

Paquebot_____

3629 Dates des departs et des arrives

Etat du temps et de la mer

Glaces

Brumes

Courants

Routes a recommander

Echange de signaux de reconnaisance

Machine

Charbon

3630 Compas

Personnel

Service des passagers

Renseignements divers concernant l'exploitation.

Appréciations générales du voyage, incidents divers.

Le Capitaine.

Petitioner's Exhibit No. 35, December 28/01. 3631

(Copy.)
(Translation.)

COMPAGNIE GENERALE TRANSATLANTIQUE,

PARIS, June 7th, 1901.

"BOURGOGNE."
MONSIEUR L'AGENT GENERAL,
New York.

We are in receipt of your letter of May 28th, informing us that Judge Brown has ordered the production of the sea journals of *La Bourgogne* from July 4th, 1896, to July 4th, 1898, also the production of the sea journals of any other vessel belonging to the Company that traversed the ocean between Havre and New York under the commandment of Captain Deloncle during that period. 3632

We regret that we cannot defer to this order, as the sea journals in question, which are those of the *La Bourgogne* and *La Normandie*, have not been kept. They could have been of use to us only in case of accident or any other important event had happened during the course of their voyages. No such accident or event occurred during the period mentioned by the Judge. Moreover you are aware that the sea journals of our different steamers are documents that are absolutely of no importance to the postal authorities, who never consult them, and who, to calculate the bounty given for speed, or any other cause, always rely on the special report that is demanded by them of our Captains at the end of each voyage. For this reason we did not consider it necessary to encumber our records with the sea journals mentioned above, that were really not nu- 3633

3634 merous, as *La Normandie* was generally put in the West Indies service since July 4th, 1896, and Captain Deloncle having taken command of *La Bourgogne* only several months previous to her accident.

Yours, etc.,

(Signed.) DORIGNY, Director.

(Signed.) CLOQUEMIN, Vice-President.

"Petitioner's Exhibit 36, February 27, '02."

3635 CIE. GENERALE TRANSATLANTIQUE,
32 Broadway, New York.

New York to Havre, Voy. No.....
S. S. .....
Sailing from New York.....
Or any other which may be substituted. Berth.

M	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

FIRST CLASS. Amount received.

CONDITIONS OF PASSAGE.

3636 I.—Passage money is to be paid in full before the departure of the steamer, and, at all events, belongs to the Company. Passengers must be on board at least two hours before the steamer leaves. In case of non-departure, only one-half the amount paid is refunded to the passenger. Tickets paid on board will be subject to a premium of 20 per cent.

II.—Each adult is entitled to a free allowance of baggage of 300 pounds or 20 cubic feet. Overweight to be charged at the rate of 40 cents for

every additional 20 pounds or fraction of same. 3637
Baggage remaining unclaimed on arrival of steamer will be stored at the Custom House, at the owner's risk and expense. Passengers are earnestly requested to mark all their baggage with their full names and addresses.

III.—Baggage and valuables may be insured at the current rate, on the company's open policy.

IV.—The Company declines all responsibility for unchecked baggage or articles kept by the passengers themselves; also for money, specie, securities, jewels and articles of value, unless they have been 3638
declared and taxed as valuables and deposited with the Purser against a receipt delivered by him.

V.—In case of damage to or total loss of baggage, for which the Company or the Captain may be responsible, the liability is not to exceed 100 dollars in first class and 60 dollars in second class, regardless of the number of pieces or their contents, AS THE PASSENGERS SHOULD HAVE THEIR BAGGAGE INSURED FOR ITS FULL VALUE ON THE COMPANY'S OPEN POLICY.

VI.—The Company will not be liable for loss or damage occasioned by accidents, fire, perils of the 3639
sea or unforeseen circumstances, or by barratry, fault or negligence whatsoever of the Captain, pilot, sailors, members of the crew or passengers.

VII.—Tickets are personal and cannot be transferred.

VIII.—The Company issues Round Trip Tickets on conditions and terms fixed by its tariff. The return ticket may be extended upon re-payment in full of the reduction allowed in the first instance. Return tickets can only be used after being duly

inscribed and registered in the Company's office, and provided vacant room can be found on the Steamer selected by the holder.

IX.—Any passenger having embarked gunpowder, matches or any other dangerous matter will be liable to a penalty of 400 dollars to the Company, besides the responsibility of all damages resulting therefrom, and all penalties imposed by the laws of France of the 18th of June, 1870.

X.—In case of quarantine, board, sanitary and other charges will be at the passenger's expense.

XI.—Passengers are bound in every case to comply with the regulations established by the Company on its Steamers.

XII.—This contract shall be governed by the laws of France and the French Courts alone shall have jurisdiction of any claim which may arise; and this condition shall be the same whether the claim be on the part of either of the principals to this contract, or by or against any assignee, warrantor, guarantor or surety, jointly or severally.

XIII.—In case of substitution of Steamers the difference (if any) between the face value of the tickets and the regular quoted rate of the steamer substituted will be charged to passengers, or reimbursed them, as the case may be.

XIV.—Any ticket not stamped with the date at the General Agent's Office in New York or at any of the General Agencies in U. S. or Canada shall be null and void.

On taking his or her ticket the passenger expressly agrees to and accepts all the foregoing conditions.

(Face of Ticket.) 3643

PASSAGE TICKET
COMPAGNIE GENERALE TRANSATLANTIQUE
CGT
FRENCH LINE.
Fast Mail Steamers.
New York. Havre. Paris.

Revue International du Droit Maritime, Vol. III, p. 543.

COURT OF APPEAL OF ROUEN.

3644

Ships—The *Champagne* and the *Ville de Rio.*

Judgment.

THE COURT:

Adopting the reasons which have determined the first judges, and because, if Article 15 of the International regulations of 1884 applies generally (to a case) where the two ships are approaching each other, there is no reason for not applying this article (to a case) where, without seeing each other, the ships hear each other; because Captain Traub, having heard the two whistles of the *Ville de Rio*, at first almost straight ahead, then a little on the port, concluded therefrom that the ship was on 3645
a course directly opposed to his own; because, in coming hard to starboard, he made a manœuvre commanded both by the regulation and by elementary prudence (Art. 15 and 23 of the regulation), since he kept away from the obstacle which he had an idea was in front of him;

As to the speed of the *Champagne* and the violation of Article 13 of the regulation, adopting similarly the reasons of the first judges; because it is not right to say that the pace of the *Champagne*

3646 must always remain without effect on the collision, since, if the ship had gone faster the collision would have been avoided; that in such case, as far as that goes, Captain Traub, having infringed the provision of the rule which prescribes only moderate speed in time of fog, would have been presumed in fault, and would have been obliged, to exonerate himself, to establish *vis major;* but that such hypothesis is not maintainable; it appears from the conclusions of the judgment and the documents in the case that, from the appearance of the fog, Captain Traub, while maintaining the ship's power of manœuvring, effected a diminution of her speed in
3647 conformity with the circumstances; that after having caused his siren to sound at intervals of thirty seconds and doubled the lookout, he eased his speed to fourteen knots; that at the sound of the whistle of the *Ville de Rio* he ordered the engineer to go slow, which brought his pace down to ten knots; that finally, at the moment of collision, the officers on board estimated the speed of the *Champagne* at seven knots; that one cannot say, therefore, that the collision had as a cause the undue speed of the *Champagne;* that one cannot even perceive any direct connection between the two facts, and that it must have been, on the contrary, that by a fatality
3648 which remains inexplicable, the *Ville de Rio* heard on her starboard a whistle on account of which, turning from her course and coming hard to port, she threw herself upon the *Champagne;* that it is this unfortunate circumstance which was the precise cause of the accident;

As to the fourth fault imputed to Captain Traub, non-observance of Article 18 of the regulation; because it is proved that as soon as he saw the *Ville de Rio*, Captain Traub reversed his engines at full speed; that he therefore obeyed Article 18 of the regulation, as he had already done in slowing down

when he heard the whistles; that at the time when 3649
the two ships saw each other, the collision was inevitable; that there was no longer time to manœuvre in a way to alter the effects of their own motion;

For these reasons, the Court affirms.

Revue Internationale Du Droit Maritime, Vol. XV, page 598.

Court of Appeals of Paris.

Widow Resal *v.* The Compagnie Generale Transatlantique.

Judgment.

3650

The Court: Considering that, on the 4th of July, 1898, about ten minutes past five in the morning, before the general call, in the midst of intense fog, while the officers of the deck of the Steamship *La Bourgogne* of the Generale Transatlantique Company were watching regularly, a sudden collision was produced between this ship and the iron three-master of 1,500 tons, the *Cromartyshire;* that after the shock the hull of the steamship was broken in on the starboard side, and three of its boats on that side were put out of service, and the sailing vessel disappeared in some instants astern, ceasing to blow her alarm horn, with her bow crushed and a 3651
part of her foremast broken down. That the *Bourgogne* stopped, then went forward, preparing for the saving, but sank after forty minutes at the most, with the loss of hull and furniture, with her commandant, all officers of the deck, all the officers of the watch, in the engine, the passengers and crew, except 165 persons saved.

Considering that in this catastrophe Paul Resal has found death, without its being possible to give the least detail of the circumstances in which he has succumbed; that his widow, acting in her name

3652 for her four minor children, has summoned the Generale Transatlantique Company for 200,000 francs damages, for the loss suffered by the death of her husband, and subsidiarily for repayment the price of passage from New York to Havre;

That the Civil Tribunal of the Seine has allotted to her 100,000 francs, but has allowed to the Company, by Article 216 of the Code of Commerce the right to abandon the *Bourgogne* and its freight, in order to free itself from its obligations;

That the widow Resal has interposed an appeal from that judgment, claiming that the indemnity was insufficient, especially that in these considera-
3653 tions it in no way repaired the loss suffered, because the ship, which sank, and the freight, are a loss; that on its side the Company has made an instant appeal, and the whole suit is thus submitted to the Court.

Considering that the widow Resal invokes to support her demand personal faults of the Company, faults common to the Company and to the Commandant of the *Bourgogne*, and faults personal to that Commander, Capt. Deloncle, for which his principal should be responsible; that she has articulated before the Tribunal nine facts; that she seemed on the appeal to articulate only seven of them; and that she argues from other facts of which
3654 she offers no proof; that the examination of the Court must bear upon each one of the grounds of responsibility to which she takes exception, and discuss them one by one, with the aid of all circumstances of the case, as well the results of the debates as of all the documents regularly put into the record, and discussed by the two parties in their writings and at the bar.

Considering that the conclusions of the appellant in chief place in the first line the following fact: "The steamer *La Bourgogne* did not offer all the

guarantees of safety that were desirable; her com- 3655
partments were maintained in defective condition; the Company allowed these compartments to be diverted from their purpose, that they should be used for the storage of merchandise; the staunchness of the compartments thus used was only an illusory guarantee."

Considering that the official reports of the inspection regularly furnished on the 5th of May, 1898, at St. Nazaire, the 29th of March, at New York, the 18th of June, of the same year, at Havre, just before her departure, show that the steamer had all the guarantees of security, and notably that the bulkheads were well established; that the alleged 3656
storage of merchandise in these compartments has not been proved by anybody, and, on the contrary, it is demonstrated that if it had been tolerated, that there was r[illegible]ing injurious in it, since all the bulkheads could [illegible] closed on the 4th of July, 1898, and without difficulty, by orders suddenly given.

Second Fact. "The route followed by the *Bourgogne* on the day of the disaster was not the normal route prescribed by the maritime regulations, but the more dangerous route, by reason of regions of fog and mist, which she traversed."

Considering, if the route adopted did not conform 3657
to that traced on the pilot chart, that its tracing was not obligatory; that the region traversed was no more foggy, and no more dangerous in the condition of the weather than other latitudes, and that by holding himself away from the Newfoundland Bank Captain Deloncle could, without imprudence, choose the line where he might probably hope to meet less vessels.

Third Fact. "In spite of the thick fog which reigned at the moment of the disaster the steamer

3658 was going at a speed of 17 or 18 knots, when, according to the regulations that speed ought to have been only twelve knots."

Considering that the *Bourgogne* steered best at fourteen knots, and that she was bound in the fog of the 4th of July to get as near as possible to that speed; that it is demonstrated that she did it; and that she was going then at twelve knots, about; that that speed is neither excessive nor contrary to the regulations.

Fourth Fact. "That the Transatlantique Company was not ignorant that its steamers followed
3659 the more dangerous route, and at a very rapid speed, in times of fog. It encourages these actions which it had the power to stop."

Considering that the first part of this charge is general in its order, and has no more pertinence, after the rejection of the facts quoted under numbers 2 and 3.

Considering that as to its second paragraph one cannot impute as fault premiums conceded without inciting to imprudence, comformably to Article 6 of the law of June 24, 1883.

Fifth Fact. "On the *Bourgogne* the material for saving did not exist, or could not be utilized. When
3660 a precise and rapid manœuvre was necessary for putting into the water the boats, the greatest difficulties opposed themselves to the efforts of the sailors who wished to try it. That the greatest part of the boats the sailors ran against absolute impossibility of making pulleys move, and the manœuvring apparatus made immovable by rust, or with paint, with which they were covered."

Considering that the official reports above cited demonstrated that the material for saving existed on board and in good condition; that it is certain

that many of the shipwrecked persons had taken their life preservers; that it is established that the boats which were spared by the *Cromartyshire* and the fall of the funnel of the *Bourgogne* were put in the water without their apparatus opposing the existence of a defective arrangement; and that the difficulties which were met came only from the enormous list rapidly taken by the steamer, which listed to starboard, and the crowd of inexperienced passengers who ran upon the boats on their chocks. 3661

Sixth Fact. "The boats which could be detached from the sides of the ship contained neither provisions nor barrels of water." 3662

Considering that these boats did conduct their lading to the *Cromartyshire*, which was without motion at three miles away; that two of them made even two voyages to the place of collision, and brought back seventy-six persons; that they were therefore used without the lack of provisions and the barrels of water having any bearing on the number of deaths; and that, therefore, this fact, if it were proved, has no bearing in the case.

Considering, besides, that it was not claimed that Paul Resal was picked up by one of these boats.

Seventh Fact. "That the manœuvre for saving prescribed by the regulations, which declare the part that each one shall take in case of eventual disaster has not been executed before the departure of the steamer. It is to this negligence that it is suitable to attribute the trouble and indecision of the crew of the ship, which have been the cause of so many victims." 3663

Considering that if this fact were held to be true, that it is of no consequence, since it is absolutely established that the crew, far from showing trouble and indecision, had given proof of the greatest

3664 energy in the course of the manœuvres that were ordered; and that it has given its devotion at the moment of the disaster, by urging the embarkation of the passengers who refused to do it; that after the destruction of the *Bourgogne* the French sailors that were saved, when in safety upon the *Cromartyshire*, quitted it twice to go back to the place of the disaster and pick up shipwrecked people, who were hanging on pieces of wreck. That it would be unjust to confound them with other sailors belonging to a foreign nation, taken as passengers only, and who violently took possession, eleven, or eighteen of them, at most, of boat No. 11, which
3665 could have contained fifty persons, have laid on their oars in the sea, and forbidden entrance to the boat by force, and that one of them showed a knife in his hand;

That the company cannot be responsible for these acts of savagery too frequent in similar catastrophes, being unable to foresee them and to repress them;

Considering that if widow Resal charges also the two other facts, the proof of which she offered to the Tribunal, and which she now appears to omit; that there is reason to reject them in the same way as the seven, for the reasons above stated;

Considering, moreover, that it was not necessary
3666 to order the inquest that was demanded, all the facts that are charged being determined to be contradicted, inadmissible and not pertinent; that, besides, it would not give any results after the disappearance of all the officers of the deck, of all the officers of the watch and the engine, and of the greatest part of the witnesses and the depositions of the most part of those who came back.

Considering that there is no ground to sustain from the body of all the complaints charged, any fault against the Compagnie Generale Transatlan-

tique, or its agents; that it has nevertheless been 3667
condemned to damages as civilly responsible for the commandant of the *Bourgogne,* who had committed grave faults after the collision;

Considering that these faults consisted of this, viz., that he proceeded to an examination which was entirely superficial, and very incomplete, of the hull of his ship. He did not stop. He by that hindered the saving. He took his vessel away from the place of the disaster; on the first point, considering that Commander Deloncle immediately ran with his second officer towards the place where the damage seemed to have been produced, but that he could not proceed himself to a detailed and pro- 3668
longed examination of the hull, and was bound, on the contrary, as he did, to go back at once to the bridge and there to take immediately the general direction of the ship, and to collect and centralize the information of his subordinates for the supreme decisions, which are not a subject of deliberation in the vessel, but must be made suddenly on post of command.

On the second point, considering that after having at first stopped, prudence did not demand that he should continue to do so, to prepare the means of saving, because the saving is organized while the ship is going.

On the contrary, the forward movement might 3669
appear indispensable for a manœuvre really necessary, that is to set in motion, in order to combat the leak, the three powerful steam pumps of the *Bourgogne,* which were moved by the engine, immediately to be availed of and ready.

Considering that the law of the 10th of March, 1891, also does not order stoppage, because the damages to the *Bourgogne* were too grave to permit her to help the *Cromartyshire,* and that on her side, that the sailing vessel which disappeared with her

3670 bow crushed, her foremast partly broken, her horn become silent, seemed impotent to aid her; that, therefore, for the safety of the 715 persons confided to his vigilance, Captain Deloncle might believe himself to be in a situation of *vis major,* provided for by Article 4; "After a collision, the captain, master or owner of each of the ships that have collided, is bound, as far as he can do without danger to his own ship, his crew and his passengers, to employ all means which he can to save the other vessel, and, except in case of *vis major,* he ought not to go away from the place of the disaster before having made himself certain."

3671 On the third point; considering that the order to go ahead which has been given and executed could not hinder the preparations for the saving, and that it has in fact in no way hindered them; that in fact Captain Deloncle has ordered them and watched over them without losing an instant; that the passengers of the first class, grouped around him and fortified by his encouragements, had their life preservers; that the boats had been put out, and that it was not the movement of the ship which has hindered their being put in the sea.

On the fourth point: Considering that Captain Deloncle had no reason for counting upon the *Cromartyshire;* that he might hope, as long as his ship
3672 was in a condition to go ahead, to try to approach the land, and that he did try that; that he gave the order to steer towards Sable Island, but before finding the leaks; that from his bridge where duty had called him and held him bound; he was not in direct relation with the boilers and the engine into which the sea penetrated at first; that he knew only some minutes later, and by the replies that came from that quarter, the extent and the imminence of the disaster; that he then tried the manœuvre which the condition of his information did not forbid,

which was, according to most competent sailors, 3673
authorized by circumstances conformable to known and cited precedents, and inspired by maritime tradition; that without doubt it has not succeeded; but it must not be judged only after the event; that it has appeared to an experienced sailor, who had made his proofs, as the last chance of safety in the middle of a catastrophe of the rapidity of lightning; that he has looked upon it with the calm that every one has been a witness of, and not taken it in the trouble of a hasty direction; that that (manœuvre) is then free from all blame; just as their rises above the heroism of a glorious death, met on the post of honor and worthy of the duty which de- 3674
volved on the captain, the abnegation of his officers and the courage of his sailors and the glory of the French marine.

Considering, therefore, that Captain Deloncle has committed no fault after the collision, and that the company is in no way responsible on this ground.

Considering in consequence that there is no ground, the demands of widow Resal having been rejected on the merits, to examine the claim which is opposed to her, nor to determine about the question of abandonment;

Considering that it was also superfluous to rectify
the error of the judgment which wrongfully at- 3675
tributed four minor children to the appellant, who has none; since there is no more reason to consider the damage which had been allotted to her for them;

Considering that the reasons given by the present decree on the principal demand applied to the subsidiary claim; that these reasons reverse the judgment of the Civil Tribunal of the Seine of the 28th of June, 1899, and determine anew;

Decides that it results from the documents, the circumstances and the facts of the cause and the

3676 debates; that the facts charged are not pertinent, are inadmissible and contradicted, and rejects the proof of them; declares that it results also from these documents, circumstances and debates, that the Generale Transatlantique Company committed no fault for which it is civilly responsible; that its agent Deloncle and his subordinates have committed none; that the company is not responsible for the acts of some passengers who took possession of one of its boats; and that the catastrophe in which Paul Resal has perished on the 4th of July, 1898, must be attributed, with all its consequences, to a case of *vis major*, for which it, the carrier is
3677 not responsible; says there is no reason to determine about the objection interposed by the company, or about the power of abandonment, which it claims subsidiarily; rejects as unfounded the demands of widow Resal, in the character in which she acted, and condemns her to the costs and all the expenses of the first suit and of the appeal.

Orders the restitution of the amount deposited upon the appeal, 18th January, 1900.

COURT OF CASSATION.

26th of March, 1901.

3678 WIDOW RESAL v. THE COMPAGNIE GENERALE TRANSATLANTIQUE.

Grounds.—Violation of Articles 1148, 1382, 1383, 1384 Civil Code, and Article 4 of the Law of 10th of March, 1891, and Article 16 of the decree of the 21st February, 1897, Article 7 of the Law of the 20th of April, 1810, in that the decree attacked has rejected an action of damages directed against Society Maritime Transportation, although that action was founded upon faults legally imputable to one of its agents.

Decree.—The Court, upon the only ground. 3679

Inasmuch as, renouncing her reliance upon the first personal faults which she had imputed to the Transatlantique Company, on the occasion of the collision of its steamboat *La Bourgogne* with the English Three-master *Cromartyshire*, on the morning of the 4th of July, 1898, the widow Resal limits herself to the charge of a false manœuvre which the commandant of the *Bourgogne* had made, and for which the company would be civilly responsible; that she charges upon him that he did not remain after the collision at the place of the disaster, in proximity to the help which the English ship might have given to him, as is prescribed by Article 4 of 3680
the law of the 10th March, 1891.

Inasmuch as in this regard it is established by the decree appealed from that the *Bourgogne* whose hull was injured in two places, and which was leaking, could only escape danger by working her pumps, and that the three powerful pumps of the hold, available and ready, were moved by the engine, it was necessary absolutely to start the vessel in motion; that besides it is not demonstrated that the distance of three miles travelled by the *Bourgogne* has led to the death of a greater number of persons; that the decree declares that the saving has been in no way hindered, and that even if an 3681
infraction of the law of 1891 were established, no relation would exist between the fault and the damage; that the decree attacked has therefore violated none of the texts above cited. For these reasons rejects the case.

3682 CIVIL TRIBUNAL OF THE SEINE. FIRST CHAMBER.

28th June, 1899.

Presidency of M. BAUDOUIN.

WIDOW RESAL v. COMPAGNIE GENERALE TRANSATLANTIQUE.

Inasmuch as M. Paul Resal having died on the 4th of July, 1898, in the shipwreck of the steamer
3683 *La Bourgogne*, his widow acting as well in her personal name as natural and legal guardian of her minor children, following the writ of the 25th of October last, summoned before the Tribunal the Generale Transatlantique Company, owner of the shipwrecked vessel, in order that it might be condemned to pay her the sum of 200,000 francs, as damages, and subsidiarily to repay to her the price of passage paid by Resal. That she invoked in support of her demand on one side the failure to execute the contract of transportation (Art. 1142 of the Civil Code), and on the other the faults which she sets forth and which she offers to prove as well against the company itself as against the
3684 captain and crew of the *Bourgogne*, for whom the company should be responsible by the terms of Articles 1382, 1383 and 1384 of the Civil Code. That the company maintains that this demand cannot be received. Article 6 of the passage ticket which had been given to Resal, stipulating formally that it was not responsible for loss or damage incurred from fault or negligence of any sort of the captain; that it claimed, besides, that the collision, as the result of which the *Bourgogne* sank, was due to a case of *vis major;* that no personal fault is im-

putable to it; that the fault has not been established as against the captain or the crew, and that the facts offered in proof of it are neither pertinent or admissible; that it seeks and finds subsidiarily that there should be given to it the right it claims to formally reserve the right to use the power of abandonment authorized by Article 216 of the Code of Commerce, if it was decided that the company was bound by any obligation whatever as against the plaintiff. 3685

Inasmuch as the action for damages founded upon an accident which has happened to a traveller during the execution of a contract of transportation does not result from a contractual obligation; but that it has its foundation in the principles of common law, on the subject of responsibility, under the power of which is placed the transportation of passengers. 3686

That these principles are exclusively fixed by Article 1382 and following of the Civil Code. That on the one side the action which they authorize is an action personal to him who suffered from the fault or quasi fault; inasmuch as it descends from a right which is peculiar to it, and does not take its source either in the person of the victim or in the contract of transportation which the latter had made.

That, therefore, the clause of the passage tickets which Resal had received from the company, which was binding as against it, cannot be invoked by the defendant against Widow Resal, who has not been party to the contract, and who acts not as having the right of her husband according to the terms of the said contract, but in virtue of her personal right or that which belongs to her minor children, as a consequence of the quasi fault which they claim to have suffered. But, on the other side, the application of Articles 1382 and the following of the Civil 3687

3688 Code implies that the plaintiff is under obligation to prove the fault which she imputes to the company, or to the persons for which the company must respond.

That Widow Resal specifies with the offer of proof nine facts, from which she claims to establish the responsibility of the company, either that she imputes them to the company as personal faults (nos. 1-5); or that she brings them as against the captain or the crew for which the company is civiliy responsible (nos. 2, 3, 6, 8, 9).

Inasmuch as all these facts have been the subject of an extended inquiry set on foot by the cares of
3689 the ship captain Aubert, delegated for this purpose by the Minister of Marine, and the judicial information set on foot before the Judge of Construction at Havre; that these documents duly communicated to the parties in the cause permit a complete appreciation of the injuries claimed, and make useless all new inquiry.

Inasmuch as the Generale Transatlantique Company proves by documents which are not contradicted (the report of the Commission of examination and receipts of postal steamships, dated 5th of May, 1898, the certificate of the Commission of Inspection of Foreign passenger steamers, delivered in New York the 29th of March, 1898, the report of
3690 the captain's examiners, drawn up at Havre the 17th of June, 1898), that the steamer *Bourgogne* offered all the guarantees of safety desirable, and that especially her compartment bulkheads were in the best condition; that if Capt. Deblacle when about to go to sea on the 2d of July, 1898, has informed the general agent of the company at New York that he had the intention of returning to France by an arc of the great circle, cutting the 50 degrees from Greenwich by 45 degrees 30 minutes north latitude, the company could not be held per-

sonally responsible for the route thus chosen; as it 3691
is for the captain on whom it is the duty to bring his ship to its destination safe and sound, and to whom the law, in order to assure as much as possible the accomplishment of this obligation confers on him the exclusive direction of the ship.

Inasmuch as it, therefore, abandons the route to his free choice regulated according to the expression of Casaregis, by justice and reason; that in these conditions the personal responsibility of the Company cannot be bound by the choice made by the captain; that neither can it be any more bound by the speed of the ship at the moment of the collision. For this is only regulated by the will of the captain, 3692
who is the master, after God, of his ship.

That the Company has done on this point of view all that depended upon it, by reproducing in Article 395 of its articles of service on board, the international regulation which prescribed to steamers in time of fog a moderate speed.

That in truth it gives to captains premiums in cases when they succeed in surpassing the medium speed fixed by the specifications, but that it only by this causes obedience to the law of the 24th of June, 1883, of which Article 6 organizes these premiums and in its specifications of which Article 45 reproduces, developing in them the dispositions of 3693
that Article 6th.

Inasmuch as it is, in fine entirely inexact to claim that the means of safety prescribed by the regulations did not exist upon the *Bourgogne*, or was not to be used.

That the reports of the different commissions which had examined the steamer in 1898, and especially just before her last voyage, give this allegation the most formal contradiction, and that they do not reproduce even the small criticism formulated by the report of 1886 on the system of davits

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3694 which held up the whaleboats, and which at that epoch seemed to leave a little to be desired in point of view of the rapidity of their action. That it was evident that this fault had been corrected at least at the time of the transformation of 1897-8. That, in truth, Captain Aubert has pointed out in his report that at the time of the organization of the means of safety the bad condition of the injured whaleboat No. 4 had hindered it from carrying more than 14 persons. But inasmuch as he explains that the injury he thus found was produced during the operations of putting it into the sea and the boat having fallen while they were dropping it, hitting the side
3695 of the *Bourgogne*, and having thus injured it forward and aft.

That the deposition of Sieur Feutret (No. 79), given in by him and in the inquest, confirms fully this explanation.

That if it is, on the other side, certain that boat No. 7 remained attached to the side of the *Bourgogne* and sank with it, that was only an accident which was produced at the moment of putting it into the sea, the lowering chain having caught near the stem and having held the boat until the moment when the fall of the after smoke stack, whose shrouds could no longer bear its weight, and smashed the boat. Inasmuch as if, in fine, several
3696 of the boats have not been able to be used for the saving, that results from different causes of *vis major;* some (1, 3, 5 on the starboard side) having been injured by the collision, the others (6, 8, 10, 12, on the port side) not having been put into the water as a consequence of the enormous list which the ship had made while sinking speedily towards the starboard, and boat No. 2 having tipped over at the side of the *Bourgogne* under the weight of passengers who got into it. That all these painful accidents are not due to the bad condition or defective organization of the material.

But from all these considerations there results 3697
the proof that the responsibility of the Company cannot be held charged for the personal faults which are attributed to it, and which it has not committed.

That as to what attaches civil responsibility by reason of the acts of the captain or the crew, it can no more be admitted either by reason of the route followed by the *Bourgogne* or by reason of the speed which the ship had at the time of the collision; that it results in fact from the report of Captain Aubert that if the route adopted by Cap. Deloncle in the intention to shorten the crossing does not conform to the route traced on the pilot chart, these tracings 3698
have nothing obligatory. That ships coming from New York to Europe have no legal route to follow, and that as the *Bourgogne* was far from the Bank, there is no observation to be made upon the route which she followed. That the speed of the boat at the time of the collision does not seem, besides, to have been exaggerated; inasmuch as the contrary opinion given by the English decisions is supported only on the idea that the steamship having crossed the bows of the *Cromartyshire*, has been the colliding ship, although it appears to result from the findings of numerous testimonies collected by Captain Aubert that it was the *Bourgogne* which
has been collided with by the English sailing ves- 3699
sel; that thus Anzel (No. 38), Le Breton (No. 47), Corre (No. 64), Dennis (No. 70), Pierre Yves (No. 88), Sanvage (No. 93), LeMager (No. 101), Le-Bris (No. 113), Tourange (No. 115), Petoit (No. 133), Valer (No. 127), have all seen the sailing vessel coming at once out of the fog on the port tack to throw herself upon the *Bourgogne*, which the sailing vessel has collided with perpendicularly on the starboard side in front of the forward hawse pipe, passing all along the side, thus demolishing

3700 with the bowsprit the boat No. 1, the bridge, the lifeboats 3 and 5, striking with its stem head on, but a little aft of the smoke pipe, and finished by passing along the steamer, so as to disappear in the fog astern; inasmuch as the damages prescribed by the witnesses Depey (28), Laisne (29), LeBourch (30), Bernard (51), Bloun (55), Bluchard (60), Duvals (72), Gemdruf (56), LeJean (87), Helin (89), LaFeste (94), Lucas (109), Maval (118), Gossy (128), confirm fully this estimation which is shared without hesitation by Captain Aubert;

That the very basis of the reasons admitted by the English Judges having thus made default, their con-
3701 clusion cannot be accepted, and that it is necessary, therefore, to seek from the testimony itself which has been collected on this point as a consequence of the depositions of all the officers of the watch, the solution of the difficulty;

That if the witness Corre (No. 64), charged with the watching of the siren, has said that the indicator of the machine was at full speed, he himself declares that they cannot conclude from that the number of turns of the engine; and that likewise if Pironec, oiler at the valves (124), deposes that the speed had not been diminished during his watch from two to five o'clock, it is certain that he has not been able to appreciate the change of speed by the
3702 movement of valves; and that, on the other side, he is formally contradicted by Fortin (No. 81) and Calvary (62), whose depositions as are clear as possible. That Fortin declares in fact that before the collision they had diminished the draft because they had diminished the speed, that his first fireman Paugan had given that order to him; that he adds that he believes that they were going at half speed.

Calvary is more categorical still, and he attests that from two o'clock to five they lessened the speed three times and augmented it twice. At two o'clock

in the morning they were making 61 turns; at four 3703
o'clock 40 turns; at 4.30, 43 turns; that he is sure that such was the speed at the time of the collision, M. Gautier having executed the manœuvre, and he, Calvary, having counted the turns when the order to lessen had come from the deck. That this declaration is confirmed by this other fact which the fireman Pallee (No. 104) relates, saying that they sometimes closed the ash pit doors, which according to the men competent in the matter, is manifest proof of diminishing the speed. Inasmuch as there is, in these conditions, no weight to be given the deposition of Voisin (No. 122), who declares that the speed must have been 62 to 63 turns, but admits 3704
that he had not counted those turns, believing only that he saw the number 62 on the wheelsman's slate at 5 o'clock.

That whatever divergencies these present among themselves permit us to conclude with M. Aubert that at the moment of the collision the speed of the *Bourgogne* ought probably not to have exceeded twelve knots. That thus reduced it was not excessive. That it had besides, for the *Bourgogne*, the great advantage that it was near the speed of 14 knots at which the ship steers best, and that it was in consequence the most calculated to favor evolutions and permit of avoiding collisions.

Inasmuch as the responsibility of the Company 3705
cannot, moreover, be held by the conduct of the crew and certain passengers during the saving; that the examinations which have been had demonstrated that the crew did what they could, and there is nothing to be drawn from the fact that the number of sailors saved has much exceeded that of the passengers who have survived the disaster. That the frightful rapidity of the catastrophe which in forty-five minutes at most swallowed up the ship, terrified and almost paralyzed all persons who were

3706 not sailors, who remained passive and inert while the sailors habituated to things of the sea and more physically powerful, have energetically fought for their life; inasmuch as if some isolated failures did occur among them, it seems to result from the information obtained in Havre, that they are specially imputable to foreign sailors who were on board as passengers upon the steamer. That it is just at the same time to take account of the sentiment of personal preservation which in such a terrible catastrophe has inspired such acts and explains them without justifying them. That the captain and owner of the ship can be responsible for
3707 the faults of passengers only as far as the limits of the captain's authority could have hindered them; and that it is manifest that Captain Deloncle was entirely impotent to foresee them in the circumstances at the instant when they were produced.

And, inasmuch as on all these points of view no fault can be brought to the charge of the captain for which the Company can be declared civilly responsible, it is otherwise with the conduct which he has observed after the collision.

That his first duty was to assure himself of the extent of the damage which the steamship had suffered from the fact of collision. If it is certain that he did, with his second officer inspect the hull, it is
3708 equally demonstrated that his examination was only entirely superficial and very incomplete, and that it has not permitted him to form an exact idea of the gravity of the situation. Inasmuch as one can explain only by an inconceivable error the deplorable determination which he took at once to head for Sable Island when it was about sixty miles distant, and it would mean five hours to reach it, whilst the ship, four of whose compartment bulkheads were broken through, and which under these conditions must surely sink in a little time, was

making water on all sides, and that the firemen 3709
gave him information that before ten minutes it would be necessary to abandon the engines. That in this condition everything commanded the captain to stop at once and to organize without delay the means of safety. That law, as well as the most ordinary prudence, made this duty imperative upon him. That Article 4 of the Law of the 10th of March, 1891, about accidents in collisions at sea, is in fact in these terms: "After a collision the captain, master or owner of each of the ships that have collided is bound, as far as he can, without danger to his ship, his crew and his passengers, to employ all means of which he can dispose to save the other 3710
vessel, its crew and its passengers, from the danger created by the collision, except in case of *vis major* he ought not to go away from the place of disaster without having made certain that any longer assistance would be useless to them, and, if the vessel has sunk, without having made all efforts to pick up the shipwrecked people. Every captain who infringes upon the foregoing requirements is to be punished by a fine of 200 to 2,000 francs and an imprisonment for a month to a year and a temporary or final discharge of the power of commander. The imprisonment may be as high as two years if one or more persons have perished in the shipwreck."

Inasmuch as these prescriptions are justified by 3711
themselves and that in obeying them Captain Deloncle would have kept his ship near, the *Cromartyshire*, deprived of the power of motion as it was by the collision, would have been able to bring help to him, and whose assistance on the place would have assured, without any doubt, the safety of a great number of those who perished. That, as a consequence of the error which has been committed the *Bourgogne* has, on the contrary, gone away at full speed from the place of collision. That, on the

3712 other side, the time which might have been usefully employed in putting the boats in the sea was so unhappily lost that the ship, filling itself with water, took a list to starboard, and that the list which it had then received has not permitted them to lower the boats on the port side. Inasmuch as in consequence of this disastrous delay, the organization of the means of safety has been completely hindered; that the captain took so little care, besides, to assure it that he has not even thought of calling upon the passengers of the first class, who were grouped around the bridge, within reach of his voice, and whom he encouraged to being calm by
3713 speaking to them of Sable Island, to provide themselves with life preservers, so that all without exception have been swallowed up with him. That in acting thus he has committed one of those errors which constitute a severe fault, and that the heroism of which he has given proof, and which has cost him his life, cannot cause to disappear the responsibility which arose on this account upon the Company whose agent he was.

Inasmuch as the Tribunal has the elements necessary to value the extent of the damages suffered by the plaintiff and her children; as M. Resal, who, for eighteen years was employed as first clerk with Mr. Morton, former Vice-President of the United States
3714 and Minister Plenipotentiary to Paris, and who had been two years in the service of President Cleveland, was earning 1,200 to 1,500 francs a month; that he sent to his wife a thousand dollars a year; that it appears certain that he was bringing back with him his savings, which he designed for the support of his family, and the building of a house at Epinal; that everything disappeared with him in the catastrophe, and that widow Resal is left without resource and her four minor children; that, as there is due to her restitution for the damages

which she has suffered, and that the Tribunal fixes 3715
100,000 francs as the indemnity which is due to her in her various capacities;

Inasmuch, moreover, as there is ground to admit the subsidiary conclusions of the Company, and to give it ground for what it reserves to itself to make, if there is reason for the abandonment of the ship and freight; that Article 216 of the Code of Commerce gives it the right; that the terms of this abandonment, which are very general, do not include any restriction; that they apply as well to the responsibility resulting from damages sustained by persons as to that which falls from the damage caused to things; that the abandonment which it author- 3716
izes does not make the supposition that the ship, which must be the object of it, still exists; that the Company only is bound to abandon it only in the condition in which it is found; even if there should not remain some remains of the ship on the surface of the water; in consequence of the principal demand of widow Resal being admitted, there is no ground to determine upon her subsidiary conclusions that for these reasons to sustain the widow Resal in her demands declares that the Transatlantique Company has committed no personal fault, but is bound civilly for the fault committed by the captain, its agent, in not stopping immediately after the collision, and for not organizing at once the 3717
means of safety; condemns it, in consequence, to pay widow Resal in her various characters the sum of 100,000 francs as damages. Also gives the right to the General Transatlantic Company, of which it reserves to itself to use, the power of abandonment authorized by Article 216 of the Code of Commerce, rejects the remainder of the respective conclusions of the parties; condemns the Transatlantic Company in all the expenses.

3718 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

In re Bourgogne.

Townsend, District Judge. On petition for Limitation of Liability.

On July 2nd, 1898 the steamship *Bourgogne* of the Compagnie Generale Transatlantique cleared Sandy Hook at 12.45 P. M. bound for Havre, France, with 714 persons on board. At about 5 o'clock on the morning of July 4th she collided off Sable
3719 Island with the British ship *Cromartyshire*. A dense fog prevailed at the time and the collision occurred almost immediately after the vessels sighted each other. The *Cromartyshire* first struck the *Bourgogne's* boat No. 1 with her jibboom and then struck the *Bourgogne* on the starboard side a little forward amidships, crushing her plating, cutting a deep hole in her side, breaking in four of her compartments and disabling other boats.

La Bourgogne at once commenced to list so heavily as to seriously interfere with efforts to lower lifeboats and, in spite of all efforts made, she sank in about half an hour. Forty-four passengers and one hundred and twenty of the crew were saved. Vari-
3720 ous actions having been brought for loss of life and property, La Compagnie Generale Transatlantique, on May 15, 1900, filed its petition for limitation of liability, and made a transfer by order of court to a trustee.

The claimants herein contest the right of the petioner to such limitation on the following grounds:

"1. The petitioner has not complied with the law and the rules of practice in its proceeding, in that it has never delivered to the trustee the freight pending for the voyage in question.

"The petitioner should be compelled to deliver such freight with interest thereon from July 4, 1898, to the trustee before any further proceeding is taken in the case. 3721

"2. The petitioner by reason of its course of conduct in this proceeding is not entitled to any favorable consideration from the Court, and all presumptions should be drawn against it.

"3. The steamer *Bourgogne* was in fault for the collision with the *Cromartyshire* because she was not navigating at a moderate speed in the fog, as required by law. 3722

"4. The steamer *Bourgogne* was being navigated by the petitioner without having complied with Section 4488 of the Revised Statutes of the United States, in that—

'(*a.*) She did not have on board such a number of lifeboats and rafts as would "best secure the safety of all persons on board."

'(*b.*) Her lifeboats were not fitted with boat-disengaging apparatus arranged as required by the above mentioned Section.'

"5. The said collision did not occur without the privity or knowledge of the petitioner, but the petitioner was itself in fault in the matter, in that— 3723

'(*a.*) It had not made sufficient regulations to ensure that the captains of its steamers should run them at a moderate speed in fog as required by law.

'(*b.*) It had knowledge that divers of the captains of its ships ran the ships at an excessive speed in fog, notwithstanding the regulation which it had made, and it took no measures to prevent their continuing so to do, and made no other regulation.

3724 '(*c.*) If it had no such knowledge, it was negligent in that it failed to obtain such knowledge, while it had abundant means of obtaining it.

'(*d.*) It failed to have the *Bourgogne* furnished and equipped as required by Sec. 4488 of the Revised Statutes.'"

1. As to the first point, that the petitioner has not delivered to the trustee the freight pending for the voyage. The statutory provisions bearing on this point are as follows:

"Sec. 4283. The liability of the owner of any ves-
3725 sel, for any embezzlement, loss, or destruction, by any person, of any property, goods, or merchandise, shipped or put on board of such vessel, or for any loss, damage, or injury by collision, or for any act, matter, or thing lost, damage, or forfeiture done, occasioned, or incurred, without the privity or knowledge of such owner or owners, shall in no case exceed the amount or value of the interest of such owner in such vessel, and her freight then pending.

Sec. 4284. Whenever any such embezzlement, loss, or destruction is suffered by several freighters or owners of goods, wares, merchandise, or any prop-
3726 erty whatever, on the same voyage, and the whole value of the vessel, and her freight for the voyage, is not sufficient to make compensation to each of them, they shall receive compensation from the owner of the vessel in proportion to their respective losses; and for that purpose the freighters and (*owner*) (owners) of the property, and the owner of the vessel, or any of them, may take the appropriate proceedings in any court, for the purpose of apportioning the sum for which the owner of the vessel may be liable among the parties entitled thereto.

Sec. 4285. It shall be deemed a sufficient compli- 3727
ance on the part of such owner with the requirements of this Title relating to his liability for any embezzlement, loss, or destruction of any property, goods, or merchandise, if he shall transfer his interest in such vessel and freight, for the benefit of such claimants, to a trustee, to be appointed by any court of competent jurisdiction, to act as such trustee for the person who may prove to be legally entitled thereto; from and after which transfer all claims and proceedings against the owner shall cease."

In Admiralty Rule 54 the freight to be surrendered in such proceedings is referred to as "freight for the voyage." 3728

The petition averred that the pending freight was "a total loss." Claimants contended that petitioner's interest therein amounted to about $55,000, and applied to the Court for an order for the payment thereof to the trustee, but said question appears to have been reserved for further consideration.

Said $55,000, claimed as freight, includes the money collected for carriage of cargo and passengers on the trip from Havre to New York and 1-52nd part of the compensation received from the French Government for carrying mails for a year. Claimants insist that the terms "freight pending," in Section 4283, and "freight for the voyage," in Section 3729
4284, are synonymous, and that the word "voyage" included the round trip from Havre to New York and return. They therefore contend that the petitioner should deliver to the trustee the sum which it received for freight and passage money on the preceding passage from Havre to New York, and on the passage on which the disaster occurred, on the ground that these passages constitute one voyage. In support of this contention claimants quote from the contract between the owners and the French

3730 Government, and the law under which it was made, as follows:

"The service to be performed includes a weekly line from Havre to New York, or *fifty-two voyages, going and returning.* The distance to go is 31,300 miles per *crossing*, and 61,600 miles per *voyage*, going and returning. * * * At the end of each annual period comprising the total of fifty-two *voyages* going and returning, there shall be prepared a summary of the results of each *crossing*."

They insist that "voyage" and "crossing" should not be given the same signification.

3731 It may be true that in litigation based upon the contract of carriage the petitioner would be bound by its interpretation of the term "voyage" in the contract. Thus, in actions on insurance policies containing limitations as to voyages undertaken, the question of the intentions of master and owner as to the enterprise entered upon are material as to the voyage. Seth Paddock *vs.* The Franklin Insurance Company, 11 Pick., 227, 231; George Friend, *et als.*, *vs.* Gloucester Mutual Fishing Insurance Company, 113 Mass., 326.

But it is not clear how such interpretation is relevant in the determination of the extent of the limitaion of liability under the Act. This Act was

3732 intended to provide a general rule whereby a ship owner might measure his responsibility for loss in certain cases. As the Supreme Court said in The Main, 152 U. S., 122: "The real object of the Act in question was to limit the liability of vessel owners to their interest in the *adventure*." This liability alone he assumes when he becomes a part owner, and, in the absence of waiver on his part, it should not be extended to include other adventures merely because an agreement entered into between shippers and shipping agents provides that for the purposes

of some particular engagement or employment a round trip or a certain number of trips shall be considered a voyage. 3733

"Voyage is a term of recognized meaning in common parlance and has received a legal interpretation accordingly." Valente *vs.* Gibbs, 28 L. J. C. P., 234. See Parsons' Shipping and Admiralty, Vol. I, p. 307, 308; *Re* Geo. Moncan, 8 Sawyer, 353.

In proceedings to limit liability it has been repeatedly held that the freight to be surrendered is the freight pending for the particular trip or journey. Thus, in The Alpina, 8 Fed., 283, Judge Blodgett says:

"It seems to me that each voyage or trip, each separate journey, which the ship makes from one port to another, must be treated as a separate venture, involving its own particular hazards, losses, and earnings. * * * The owner, freighters, and passengers on any particular voyage may be said to have a common interest for that voyage. They may be compelled to contribute for jettisons made for the common safety under certain circumstances. But there is nothing in common between the freighters and passengers of different voyages." 3734

And he held in this case that each daily trip constituted a voyage and that they could not be grouped together. 3735

In The Rose Culkin, 52 Fed., 332, Judge Brown cites this case with approval, and, taking the same view, holds that each trip constitutes a voyage.

In The Mary Adelaide Randall, 93 Fed., 222, the writer had occasion to collect some of the definitions of "voyage," and there held that the word in its maritime sense meant the transit at sea from one terminus to another; and the Court of Appeals, affirming the judgment, speaks of a voyage as signifying in its strict sense the "actual transit of the vessel from port to port." 98 Fed., 895.

3736 In the Giles Loring, 48 Fed., 472, Judge Webb held

"By the charter-party one-half of the freight was earned and payable on right delivery of the outward cargo from Boston to the west coast, and that half was accordingly paid. The other half was freight pending when the voyage terminated, and would be earned only on delivery of the cargo at its destination, before which it was of no value to the owners. The City of Norwich, 118 U. S., 491; 6 Sup. Ct. Rep., 1150. As that portion of the freight was never earned, nothing is to be added on its account to the value of the vessel, for the purpose
3737 of showing the amount of the owners' liability."

The object of the statute would be defeated if owners were to be held liable for the amount of freight prepaid on previous passages or trips, because, as between shipper and ship owner, the contract had stipulated that the successive trips should be treated as a single voyage.

The money paid for the crossing from Havre to New York did not constitute any freight which the petitioner was bound to deposit.

As to the claim that compensation from the French Government for the crossing from Havre, during which the vessel was lost, should be included
3738 in the freight, there is no evidence that the owners received any compensation for this crossing or that the mails may not have been carried by some other steamer.

Counsel for claimants contend that as the freight money and passenger fares had been paid in advance, and as the passage tickets and bills of lading provided that prepaid freight and passage money should be the property of the steamship company whether the vessel were lost or not lost, such money cannot be recovered back, and that, even if such

had not been the agreement, the passengers and 3739
shippers could only claim their *pro rata* share in common with other claimants. And they insist that in any event the petitioner should have surrendered the freight and passage money paid for the pending trip from Havre to New York.

Counsel for the petitioner, on the other hand, contends that the provisions in the passage tickets and bills of lading that prepaid freight and passage money shall be the property of the steamship company whether the vessel be lost or not lost, excludes such money from the category of "pending freight."

That the passage money is included under the term freight is expressly decided in The Main, 3740
supra.

The question of freight is an interesting one, and, as no precedents have been cited by counsel on either side, it is probably novel and must be decided as a matter of first impression. What construction is to be given to the term "pending freight" in the statute?

The freight money was not *actually earned* under the ordinary rules of law. The petitioner claims that this prepaid money has in fact been returned to the parties who paid it or to their representatives. But claimants, with apparent reason, maintain that if these parties were not legally entitled to receive it, and it is properly included in the statutory term 3741
"pending freight," such payment does not operate to relieve petitioner from its obligation to pay such freight into court. The natural meaning of the words "pending freight" is freight dependent or contingent on the completion of the voyage. Until the voyage is completed *it is not earned.* That part of the contract which provides that it should not be returned, even in cases of loss, is more nearly like a contract of insurance than of affreightment. Substantially, the passengers and shippers insure the

owners against loss to the extent of the money thus paid but not earned. But the owners are not obliged to surrender insurance money in order to limit liability. City of Norwich, 118 U. S., 468.

The term "pending freight" has been generally used in the cases in the sense of freight to be earned by the carriage of the specific goods or passengers on board the vessel at the time of the loss. Thus, in The City of Norwich, *supra,* the Supreme Court says:

"Pending freight is of no value to the ship-owner until it is earned; and it is not earned, if earned at all, until the conclusion of the voyage. * * * If, however, by reason of the loss or sinking of the ship the voyage is never completed, but is broken up and ended by causes over which the owners have no control, the value of the ship (if it has any value) at the time of such breaking up and ending of the voyage must be taken as the measure of the owners' liability. In most cases of this character no freight will be earned."

And in The Main, *supra,* it is said that the property to be assessed comprises "whatever is on board for the object of the voyage belonging to the owners, whether such object be warfare, the conveyance of passengers, goods or the fisheries." The Court further says:

"The words 'freight pending,' in Section 4283, or 'freight for the voyage,' Section 4284, were copied from the English statute of George II, which, in turn, were copied from the Marine Ordinance of 1681, and the prior Continental codes; but in both cases they were evidently intended to represent the *earnings* of the voyage, whether from the carriage of passengers or merchandise. If these words were used instead of the words 'freight for the voyage,'

it would probably more accurately express the in- 3745
tent of the Legislature."

And in *The Abbie C. Stubbs*, 28 Fed., at page 720, Judge Nelson holds as follows:

"When a ship-owner sends his ship to sea, so far as his liability for collisions and other losses happening through the fault of those in charge of her, and without his privity or knowledge, is concerned, he puts at risk only his ship, the expense of navigating her, and the freight she may earn on the voyage. His responsibility is limited to the capital embarked in the adventure, and the profit he may gain from it in the form of freight, or its equivalent. 3746
If the ship is sunk or destroyed, and no freight earned, his whole responsibility is at an end. If either or both are saved, in whole or in part, to that extent his liability remains. The words 'her freight then pending,' as used in Section 4283, must at least include freight earned at the end of the voyage, for cargo on board at the time of the collision, which is this case."

He holds that certain demurrage on the passage, when the voyage terminated, is of the character of freight pending, and that such freight during the voyage or charter, in the performance of which the losses were caused by the master, should be surrendered. 3747

Crump, in his work on Marine Insurance and General Average, says: "To constitute freight a contributing interest it must have been pending at the time of the sacrifice.'

It seems most consonant with the tenor of the foregoing decisions that, unless the freight and passage money are pending in the sense that they are earned as the result of the maritime adventure, they do not fall within the terms of the statute. The case of *The Main*, *supra*, cited by counsel for claimants,

3748 does not sustain their contention, because in that case the voyage was completed and the freight earned.

2. *La Bourgogne* had seven sundred and fourteen persons on board, while her lifeboat and raft capacity would provide for only six hundred and fifty-eight. Claimants contend that the ship was in actual violation of a statutory rule and, therefore, within the doctrine laid down in *The Pennsylvania*, 19 Wall., 125, the burden is thrown upon her of showing that such violation could not have been one of the causes of the disaster.

3749 Sections 4488 and 4489, Revised Statutes, provide as follows:

"Sec. 4488. Every steamer navigating the ocean, or any lake, bay, or sound of the United States, shall be provided with such numbers of lifeboats, floats, rafts, life preservers, and drags, as will best secure the safety of all persons on board of such vessel in case of disaster; and every sea-going vessel carrying passengers, and every such vessel navigating any of the northern or northwestern lakes, shall have the lifeboats required by law, provided with suitable boat-disengaging apparatus, so arranged as to allow such boats to be safely launched while such
3750 vessels are under speed or otherwise, and so as to allow such disengaging-apparatus to be operated by one person, disengaging both ends of the boat simultaneously from the tackles by which it may be lowered to the water. And the board of supervising inspectors shall fix and determine, by their rules and regulations, the kind of lifeboats, floats, rafts, life preservers, and drags that shall be used on such vessels, and also the kind and capacity of pumps or other appliances for freeing the steamer from water in case of heavy leakage, the capacity of

such pumps or appliances being suited to the navi- 3751
gation in which the steamer is employed.

"Sec. 4489. The owner of any such steamer who neglects or refuses to provide such lifeboats, floats, rafts, life preservers, drags, pumps, or appliances, as are, under the provisions of the preceding section, required by the board of supervising inspectors, and approved by the Secretary of the Treasury, shall be fined one thousand dollars."

It appears, from the testimony of General Dumont, the Supervising Inspector of Steamboats, and of the Assistant Inspector, that *La Bourgogne* was duly inspected March 29th, 1898, and that she complied with all the requirements imposed by said 3752
inspectors and duly received a certificate to that effect. The "rules and regulations" of the board of inspectors leave the question of what is required in each case largely to the judgment and discretion of said board. It appears from the testimony of Dumont, the Supervising Inspector, that she was provided with such sufficient number of lifeboats as would best secure the safety of all on board, because she could not carry more boats without interfering with the management of the ship and thus creating more danger than would result from the lack of boats. And the Assistant Inspector, Wilmurt, testified that she had all the lifeboats, life 3753
rafts, life saving appliances and life preservers necessary under the law. I understand that it is admitted that Section 4493, on which great stress is laid by counsel for the claimants, is not applicable to foreign vessels.

Counsel for the claimants further contend that *La Bourgogne* was not provided with proper boat-disengaging apparatus. This contention is chiefly supported by the testimony of two witnesses interested in a patent releasing hook. It appeared, however, that this hook had been rejected as impractic-

3754 able by various boards of steamboat inspectors, and that it had not been introduced into general use on other steamers.

The supervising inspector of steamboats says that he knows of no device capable of satisfying the requirements of the statute, and that, therefore, the local boards of inspectors have made the law practically effective by requiring all such vessels to have detaching hooks, which are absolutely safe and as good a device as can be used, and that this is the ordinary block and fall and hook, such as was used on *La Bourgogne*.

These contentions of claimants are not proved.

3755 3. The question of speed at the time of the collision has been much discussed and considered. In the English Admiralty Court it was found that *La Bourgogne* was in fault for excessive speed, and that the *Cromartyshire* was not in fault. The French Court of Appeals and Court of Cassation held that *La Bourgogne* was free from fault and that the collision was caused by the faulty navigation of the *Cromartyshire*.

The evidence tends to prove that the proper officers were on deck and attentive to their duties up to the time of the collision, so that there is no imputation of negligence except in the matter of speed.

3756 About four o'clock in the morning the steamer encountered a dense fog which prevailed at the time of the collision. The siren was blown regularly from some time after four o'clock. A number of witnesses, including Corre, the steersman of *La Bourgogne;* Laisne, the fourth engineer; Fortin, a fireman; Seol, the second purser, and several of the crew of *La Bourgogne,* testify that she was slowed down at the time of the collision. These witnesses make various statements of fact in support of their testimony as to the reduction of speed, which would have been of considerable force if the alleged facts

had been capable of verification or had come from 3757
disinterested witnesses.

The witnesses for the claimants also are interested. Commeau, the steerage passenger, on whose testimony claimants largely rely, made such an unfavorable appearance and told such an extraordinary story on the witness stand that his whole testimony must be discredited. Henderson, the master of the colliding ship, testifies that *La Bourgogne* was running between 15 and 20 knots an hour at the time of the collision.

The testimony on both sides is necessarily unsatisfactory for various reasons. The chief officers of *La Bourgogne* were drowned; with the exception of 3758
Henderson, the persons on board the *Cromartyshire* were not examined; all the w' aesses are interested; the passengers who testify to excessive speed were not experts. In these circumstances, this question must be further considered in the side light of such evidence as that the fast steamships of this line, as of ocean lines generally, are apparently run at a dangerous speed in times of fog; that unless *La Bourgogne* had been continuously running at approximately full speed she could not have reached the point where she was at the time of the collision; that no orders to reduce speed are satisfactorily proved; and that when the horn of the *Cromartyshire* was heard the telegraph was put to 3759
"stand by," when, if *La Bourgogne* had already slowed down, the order would have been to "stop." The testimony of the witnesses for *La Bourgogne* that orders were given to close the ash pit doors and that this was done shows that the effect of such action would be at most to slightly diminish the speed of the engine, but not to sufficiently reduce speed, so that, after all allowances made, it would seem that the steamer must have been running at the rate of about 10 knots an hour.

3760 This conclusion is supported by the suddenness of the shock, the almost imperceptible interval between the hearing of the signal and the collision, and the severity of the concussion, shown by the disastrous consequences.

It must be found that *La Bourgogne* was in fault for failure to reduce her speed to a point of safety or to one at which such a collision might have been avoided.

4. In support of the contention that the collision did not occur without the privity or knowledge of the petitioner, it is alleged: first, that the petitioner
3761 had not made sufficient regulations to insure that the captains of its steamers should run them at moderate speed in fogs; second, that with knowledge that its captains ran ships at an excessive rate of speed, notwithstanding the existing regulations, it took no further measures for prevention; and, third, that if it did know such fact, it was negligent in failing to obtain such knowledge. An order of the company in reference to this matter, passed in 1884, is as follows:

"Our Board of Directors having seriously in mind the numerous collisions which daily occur at this season in the parts frequented
3762 by our steamers, we come to beg you to recall to all our captains individually the recommendations which we have always made to them, to use the greatest prudence in their navigation, and to never hesitate in certain doubtful cases to adopt the most suitable measures to assure the safety of their steamers, even if a loss of time should result from so doing.

"You will insist upon it with them that in times of fogs the most active watch be kept on board their vessels and that all the pre-

scriptions indicated in the rule as to collisions be strictly observed as well by day as by night." 3763

And in 1891 the substance of this order was embodied in permanent regulations as follows:

"Article 393. When the company's vessels are in localities frequented by vessels, especially in foggy weather and during the night, the engineer on watch and the necessary men for maneuvering must be within reach of the apparatus for changing the speed. The order is given by the officer of the watch to the engine room and mention is made in the ship's log and that of the engineers of the hour at which that order was given and received. 3764

"Article 394. The company's vessels conform to the International Rules for the purpose of preventing collisions. A printed copy of said rule is posted up in a conspicuous place in order that the officers may take notice of it.

"The prescriptions of said rule, relative to phonic signals to be caused to be heard in foggy weather must be rigorously observed; besides, in said circumstances, a man must be placed aloft on lookout. 3765

"Article 395. In conformity with the rules of International Regulations, having for object the prevention of collisions, all vessels under steam which approach each other so that there may be risk of collision, must diminish their speed, or stop and go backwards, if necessary. All vessels under steam must, during foggy weather, preserve a moderate speed.

3766 "The captain under these circumstances must diminish the speed of his engines and, in agreement with the Agent of Postes, the captain must make known by *proces verbal* the delays which such manœuvres may have occasioned."

Perhaps the Court should take judicial notice of the almost universal practice of running ocean liners at excessive speed in fogs. There is considerable testimony in this case, however, to the effect that the vessels of the French Line did *sensibly and materially* reduce their speed on such occasions.
3767 Two of the captains testified that they always slowed down in a fog, and four passenger witnesses supported this testimony. On the other hand, six witnesses for the petitioner testified to the contrary. But even if it be assumed that the commanders of the steamships were in the habit of violating the foregoing rules and that the company had knowledge thereof, there is not sufficient evidence to show that the company was negligent in its failure to enforce the rules. The evidence sustains the claim that the company had used due diligence in securing officers of experience and ability. It is not clear that any further precautions than those established
3768 by the orders and regulations quoted above would have been practicable. The question of rate of speed in a fog is one which cannot be determined by set rules, but must be left largely to the discretion of the officers of the ship. They are entrusted with the responsibility of the carriage of mails, freight, and passengers at the greatest speed which is consistent with safety. Their own lives as well as those of the passengers and crew are at stake. The determination of the question, therefore, as to what is to be done in all the varying stages between a light haze and a dense fog, rests upon a great variety

of circumstances and conditions, all looking toward 3769
the question of what is a moderate rate of speed in existing conditions.

In The Norwich Transportation Company *vs.* Wright, 13 Wall., 104, the Supreme Court of the United States discusses at length the history of the limitation of the liability of ship owners from the earliest times, and quotes Valin as saying that, with certain exceptions, "it is just that the owner should not be bound for the acts of the master, except to the amount of the ship and freight. Otherwise he would run the risk of being ruined by the bad faith or negligence of his captain. * * * It is quite sufficient that he be exposed to the loss of his ship 3770
and of the freight to make it his interest, independently of any goods he may have on board, to select a reliable captain." The Court then adds:

> "The great object of the law was to encourage ship building and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of the country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the 3771
> other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the hazards of the sea, and to the management of seafaring men, without making them liable for additional losses and damage to an indefinite amount. How many enterprises in mining, manufacturing and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions by which they

3772 are exempt from personal liability, or from liability except to a limited extent! The public interests require the investment of capital in ship building, quite as much as in any of these enterprises. And if there exist good reasons for exempting innocent ship owners from liability, beyond the amount of their interest, for loss or damage to goods carried in their vessels, precisely the same reasons exist for exempting them to the same extent from personal liability in cases of collision. In one case as in the other, their property is in the hands of agents whom
3773 they are obliged to employ."

In view of the foregoing conclusions, the question as to liability for loss of life becomes practically an academic one. For the purpose, however, of a formal disposition of this question in the decree, I hold, on the authority of Rundell *vs.* La Compagnie Generale Transatlantique, 94 Fed., 366, affirmed 100 Fed., 655, that there can be no recovery under the general maritime law for damages for negligence resulting in death on the high seas. Therefore the petitioner is not liable for claims for loss of life.

3774 The testimony and exhibits in this case are very voluminous. Inasmuch as the only time permitted for its dispesition has been during the crowded week in which my term of office as District Judge expires, it has been impossible to give the full consideration to the complicated questions of fact and law which the importance of the interests involved demand and would otherwise have received.

The petition is granted.

March 22/02.

Benedict & Benedict,

William H. Button,

A. Gordon Murray, 3775
Harold Binney,
Hastings & Gleason,
Kenneson, Crain, Emley & Rubino,
G. J. Wiederhold,
Alexander & Colby,
Morris Putnam Stevens,
Frank L. Eckerson,
Townsend & Mann,
Judson G. Wells,
George Sanders and E. W. Powers,
William R. Page,
Wilbur & Ludlow,
Bullowa & Bullowa, 3776
G. T. Goldthwaite,
For Claimants.

Edward K. Jones,
For Petitioner.

3777

3778 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the U. S. Court House and Post Office Building in the Borough of Manhattan, in the City of New York, on the 22d day of March, 1902.

Present—Hon. WILLIAM K. TOWNSEND,
Judge.

IN THE MATTER

OF

3779 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

This cause having come on for hearing before the Court on the pleadings and proofs, and having been duly argued by counsel on both sides, and the Court having duly considering the same, it is now

Ordered, adjudged and decreed:

3780 FIRST.—That the prayer of the petitioner for a limitation of its liability for all losses, injuries, damages and other claims growing out of the loss or foundering of *La Bourgogne*, mentioned in the petition, be and the same is hereby granted as provided by the statutes of the United States in such case made and provided.

SECOND.—That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and

the same are hereby disallowed and excluded from 3781
consideration in this proceeding.

THIRD.—That the steamship *La Bourgogne* was at fault and to blame for the collision set forth in the pleadings in this cause.

FOURTH.—That the claims in this cause, other than those for alleged damages for alleged negligence resulting in loss of life, which are hereby excluded, be and the same are referred to Thomas Alexander, Esquire, of New York, who is hereby appointed a commissioner to take testimony as to the amount of such claims and report the same to 3782
this Court, together with his opinion, with all convenient speed.

FIFTH.—That the petitioner has duly transferred and surrendered its interest in the value of the said steamship *La Bourgogne* and her pending freight by the transfer heretofore made to the trustee appointed in this cause, and that the value of such interest extends no further than the value of the lifeboat and life raft mentioned in the said pleadings, and which the said petitioner has duly surrendered to the said trustee.

WM. K. TOWNSEND,
U. S. District Judge. 3783

(Endorsed) —Decree.—U. S. District Court.—
Filed April 1, 1902.

3784 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability and other relief.

3785

SIR:

Please take notice that on the annexed affidavit of A. Gordon Murray and upon the pleadings and proceedings herein the undersigned will move the Court at the Court Room in the Post Office Building in the City of New York, on the 29th day of April, 1902, at the opening of Court, or as soon thereafter as Counsel can be heard, for an order modifying the injunction heretofore granted herein, so as to allow Pauline Henuy to proceed with the prosecution of the action now pending in the New York Supreme Court, New York County, wherein she is plaintiff and the petitioner herein is defend-
3786 ant, in so far as said action is for damages occasioned by defendant's or its servants' neglect resulting in the death of plaintiff's intestate, one Juliette Cicot.

New York, April 23rd, 1902.

Yours, &c.,
A. GORDON MURRAY,
Proctor in Admiralty for Pauline Henuy,
34 Pine Street,
New York City.

To EDWARD K. JONES, Esq.,
Proctor for Petitioner,
49 Wall Street,
New York City.

UNITED STATES DISTRICT COURT, 3787

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

3788

Southern District of New York, ss.:

A. GORDON MURRAY, being duly sworn, deposes and says that he is proctor in admiralty for Pauline Henuy, administratrix of the estate of Juliette Cicot, deceased, and that he interposed an answer to the petition herein in her behalf together with other claimants.

Deponent says that on or about the 5th day of October, 1898, the said Pauline Henuy brought an action at law against this petitioner as defendant in the New York Supreme Court, New York County, claiming damages against the said defendant for 3789
negligently causing the death of plaintiff's intestate one Juliette Cicot, aboard defendant's steamship *La Bourgogne* on July 4th, 1898.

That an answer was interposed thereto by the defendant and that certain testimony had been taken therein when the said action was stayed by an order of this Court, dated the 15th day of May, 1898, and a monition issued to the said Pauline Henuy to assert whatever claims she had against *La Bourgogne* or its owner in this proceeding in Limitation of Liability.

3790 That the petition herein was filed on or about the 15th day of May, 1900, and the answer aforesaid interposed thereto on or about the 1st day of September, 1900, and that the cause came on for hearing or trial before the Hon. William K. Townsend, United States District Judge, in October, 1901, and a decision rendered by the said Judge and an order entered thereon on or about the 22nd day of March, 1902.

Deponent shows that by said decision it was held that a Court of Admiralty had no jurisdiction to adjudicate upon a claim for loss of life at sea, and ordered that claims for loss of life be excluded
3791 from consideration in this proceeding.

Deponent further shows that such actions are maintainable in the Courts of the State of New York.

McDonald *vs.* Mallory, 77 New York, 546;

Boyle *vs.* Southern R. R. Co., 36 Misc. (N. Y.), 289;

See also

The *Jane Grey*, 95 Fed. Rep., 693; 99 Fed. Rep., 582;

And

The *Lamington*, 87 Fed. Rep., 752.

Wherefore it is asked that the injunction hereto-
3792 fore granted against the further prosecution of suits for loss of life be modified and the order of this Court staying the prosecution of the action aforesaid of Henuy *vs.* La Compagnie Generale Transatlantique be vacated and the plaintiff be allowed to proceed if she shall be so advised, and for such other and further relief as may be just.

A. GORDON MURRAY.

Sworn to before me this 24th day of April, 1902,

[SEAL.] RUSSELL LORD TAYLOR,
Notary Public,
County of New York.

UNITED STATES DISTRICT COURT, 3793

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. July 15, 1902. 3794

EDWARD K. JONES, proctor for petitioner.
ROBERT D. BENEDICT and A. GORDON MURRAY, proctors for certain claimants.

THOMAS, *J.*:

The owner of the steamship *La Bourgogne* petitioned the Court for a decree limiting its liability among other things for damages arising from the death of passengers on the steamship, which was lost in a collision at sea. After these proceedings were pending, the several parties seeking to enforce 3795
such damages in other courts were enjoined therein and thereupon filed their claims herein. A prolonged hearing was had before this court, and its ascertainments were primarily stated in the opinion of Judge Townsend, which among other things contained the following:

> "In view of the foregoing conclusions, the question as to liability for loss of life becomes practically an academic one. For the purpose, however, of a formal disposition of

3796 this question in the decree, I hold, on the authority of Rundell *vs.* La Compagnie Generale Transatlantique, 94 Fed., 366, affirmed 100 Fed., 655, that there can be no recovery under the general maritime law for damages for negligence resulting in death on the high seas. Therefore the petitioner is not liable for claims for loss of life."

Here is a direct finding that the petitioner is not liable for the claims represented by the moving parties on the present motion, and had the judgment followed the finding, the disturbing question
3797 now before the Court would not have arisen. But, at the instance of the petitioner, the following provision was inserted in the decree:

"SECOND.—That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from consideration in this proceeding."

The obvious determination is that the claims are disallowed, and the further paradoxical judgment is that they are not even considered, which second
3798 conclusion not only disputes the first, but is in direct antagonism to the finding of the Court. Two of the claimants now move the Court to dissolve the injunction, that they may be permitted to enforce their claims in a court that will consider them and dispose of them upon the merits, and their argument is that they have been enjoined from proceeding in other courts, have been invited to this court, and now find themselves face to face with a decree which states that their claims are excluded from consideration. But the opinion primarily states what the Court did do, shows that the claims

were considered, and disallowed after due consid- 3799
eration, and the judgment procured by the petitioner should have conformed to this finding. It is anomalous that the petitioner should hold a judgment declaring that suitors shall not be heard, and at the same time bind them as if they had been heard. Judge Townsend intended nothing of the kind, and had his attention been called to the peculiarity of the phraseology would not have suffered it. Undoubtedly the learned judge understood that he disallowed the claims and that they would not be considered by the commissioner. It is true that such is not the strict reading of the decree, but there can be no doubt that such was the intended 3800
decree. Reading the judgment in connection with the opinion the decree may be so interpreted, and upon the ground that there may be such interpretation the motion is denied. If, however, the moving parties desire to place upon the petitioner the burden of correcting the decree, and it merits correction, such disposition may be manifested before the entry of an order hereon. In such case the proceedings shall be stayed until such correction shall have been made, and if it shall not have been made or duly attempted within a reasonable time hereafter, the claimants may apply to the Court for the present relief.

EDWARD B. THOMAS, 3801
U. S. J.

3802 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation
3803 of liability.

SIRS:

Please take notice that upon all the papers and proceedings herein we shall apply to the Hon. Edward B. Thomas, United States District Judge, at his chambers in the United States Court House and Post Office Building in the City of Brooklyn, on the 16th day of September, 1902, at 10.30 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order amending and correcting *nunc pro tunc* as of the 22nd day of March, 1902,
3804 paragraph "Second" of the decree entered herein by the Hon. William K. Townsend, United States District Judge, on the 22nd day of March, 1902, and filed in the office of the Clerk in the above-entitled Court on said day, so as to read as follows:

"SECOND.—That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from consideration by the Commissioner in this

proceeding"; and for such other or further order as 3805
to the Court may seem just and proper.

Dated New York, September 11th, 1902.

Yours, etc.,
(Signed) JONES & GOVIN,
Proctors for Petitioner.

To Messrs. BENEDICT & BENEDICT,
WILLIAM H. BUTTON,
A. GORDON MURRAY,
HAROLD BINNEY,
HASTINGS & GLEASON,
KENNESON, CRAIN, EMLEY & RUBINO,
G. J. WIDERHOLD,
ALEXANDER & COLBY, 3806
MORRIS PUTNAM STEVENS,
FRANK L. ECKERSON,
TOWNSEND & MANN,
JUDSON G. WELLS,
GEORGE SANDER & E. W. POWERS,
WILLIAM R. PAGE,
WILBUR & LUDLOW,
BULLOWA & BULLOWA,
G. T. GOLDTHWAITE,
HARRISON, SEASONGOOD & EDWARDS.

(Endorsed)—Notice of motion.—Filed Sept. 30, 1902. 3807

3808 At a Stated Term of the District Court of the United States for the Southern District of New York, held on the 29th day of September, 1902.

Present—Hon. EDWARD B. THOMAS,
United States District Judge.

IN THE MATTER

OF

The Petition of LA COMPAGNIE
3809 GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

An application having been made in behalf of the petitioner herein for an order amending and correcting *nunc pro tunc* as of the 22nd day of March, 1902, paragraph "Second" of the decree entered herein by the Hon. William K. Townsend, United States District Judge, on the 22nd day of March, 1902, and filed in the office of the Clerk of the above-
3810 entitled Court on said day, etc., and the said application having come on to be heard, and after hearing counsel for the respective parties hereto.

Now on reading and filing the notice of said application, and upon all the papers and proceedings herein, and on motion of Edward K. Jones, Esq., proctor for the petitioner herein, it is

Ordered that paragraph "Second" of the decree entered herein by the Hon. William K. Townsend, United States District Judge, on the 22nd day of March, 1902, and filed in the office of the Clerk in the above-entitled Court on said day, be and the

same is hereby amended and corrected *nunc pro* 3811
tunc as of the said 22nd day of March, 1902, so as to read as follows:

"SECOND.—That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from consideration by the Commissioner in this proceeding."

EDWARD B. THOMAS,
U. S. District Judge.

(Endorsed)—Order amending and correcting decree of March 22nd, 1902.—U. S. District 3812
Court.—Filed Sept. 30, 1902.—S. D. N. Y.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability. 3813

SIR:

Please take notice that at the close of the hearing upon motion noticed by you on the 11th of September for a correction of the decree heretofore

3814 entered, I shall apply to the Court in accordance with the permission of the Court, for the relief heretofore moved for by me, in modifying the injunction herein.

Dated September 13, 1902.

Yours, &c.,
A. GORDON MURRAY,
Proctor for Claimant.

To E. K. JONES, Esq.,
Proctor for Petitioner.

(Endorsed)—Notice of motion.—Copy of within
3815 motion received Sept. 13, 1902. Jones & Govin, Proctors for Petitioners.

3816

At a Stated Term of the District Court 3817
of the United States for the Southern District of New York, held in the court rooms in the Federal Building, Borough of Manhattan and City of New York, this 4th day of October, 1902.

Present—Hon. EDWARD B. THOMAS,
District Judge.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE, for limitation of liability.

3818

A motion having been made on behalf of Pauline Henuy, administratrix, to vacate the injunction order heretofore issued in this matter so far as to permit the said Henuy, administratrix, to continue the prosecution of her suit against the petitioner in 3819
the Supreme Court of the State of New York, on the ground that the decree heretofore made herein was only a decree that the claim of said Henuy, administratrix, could not be considered in this proceeding, and was, therefore, disallowed in this proceeding, and the Court having decided that the motion should be issued, but that unless the petitioner applied for a correction of the decree, the motion might be renewed, and thereupon the petitioner having applied for an amendment and correction of the decree heretofore entered in this proceeding,

3820 and the said decree having been on September 29th, 1902, amended and corrected so as to read as follows, namely:

> "That all claims filed herein for alleged negligence resulting in loss of life in the disaster referred to in the petition be, and the same are hereby disallowed and excluded from the consideration of the commissioner in this proceeding."

And the above motion to dissolve the injunction having been thereupon renewed, Now, after hearing
3821 R. D. Benedict, representing A. Gordon Murray, proctor for said Pauline Henuy, administratrix, in support of the motion, and Frederick Kopf, counsel for the petitioner in opposition, and the counsel for the petitioner claiming that the decree as above amended is a decision that the claimant Pauline Henuy, administratrix, has no right of action against the petitioner under the general maritime law, or under the French law, or under the law of the State of New York, or under any law whatever, and it appearing to the Court that the construction of said language of the decree as claimed by the counsel for the petitioner is correct, and that the language of the decision, to wit:

3822

> "That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition, be and the same are hereby disallowed and excluded from the consideration of the Commissioner in this proceeding,"

is a decree that the claimant Pauline Henuy, administratrix, has no right to recover damages against the petitioner under the general maritime law, or under the French law, or under the law of the State

of New York, or under any other law; therefore, it 3823
is now

Ordered, that the motion to vacate the injunction herein so far as to allow said Pauline Henuy, administratrix, to prosecute her said claim in the Supreme Court of the State of New York, be and the same is hereby denied.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Order.—Filed October 4, 1902.

At a Stated Term of the District Court 3824
of the United States for the Southern District of New York, held in the Court Rooms in the Federal Building, Borough of Manhattan and City of New York, this 4th day of October, 1902.

Present—Hon. EDWARD B. THOMAS,
District Judge.

IN THE MATTER
OF
The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability. 3825

A motion having been made on behalf of George Deslions to vacate the injunction order heretofore issued in this matter so far as to permit the said

3826 Deslions to continue the prosecution of his suit against the petitioner in the Circuit Court of the United States for the Southern District of New York, on the ground that the decree heretofore made herein was only a decree that the claim of said Deslions could not be considered in this proceeding, and was, therefore, disallowed in this proceeding, and the Court having decided that the motion should be denied, but that unless the petitioner applied for a correction of the decree the motion might be renewed, and thereupon the petitioner having applied for an amendment and correction of the degree heretofore entered in this proceeding,
3827 and the said decree having been on September 29th, 1902, amended and corrected so as to read as follows, namely:

> "That all claims filed herein for alleged negligence resulting in loss of life in the disaster referred to in the petition be, and the same are, hereby disallowed and excluded from the consideration of the Commissioner in this proceeding."

And the above motion to dissolve the injunction having been thereupon renewed, Now, after hearing R. D. Benedict, proctor for Deslions, in support of
3828 the motion, and Frederick Kopf, counsel for the petitioner, in opposition, and the counsel for the petitioner claiming that the decree as above amended is a decision that the claimant George Deslions has no right of action against the petitioner under the general maritime law, or under the French law, or under the law of the State of New York, or under any law whatever, and it appearing to the Court that the construction of said language of the degree as claimed by the counsel

for the petitioner is correct, and that the language 3829
of the decree, to wit:

> "That all claims filed herein for alleged damages for alleged negligence resulting in loss of life in the disaster referred to in the petition be, and the same are, hereby disallowed and excluded from the consideration of the Commissioner in this proceeding,"

is a decree that the claimant George Deslions has no right to recover damages against the petitioner under the general maritime law, or under the law of the State of New York, or under the French law, 3830
or under any other law; therefore, it is now

Ordered and decreed that the motion to vacate the injunction herein, so far as to allow the said George Deslions to prosecute his said claim in the Circuit Court of the United States, be and the same is hereby denied.

EDWARD B. THOMAS,
U. S. J.

(Endorsed on Cover)—Order U. S. District Court
Filed Oct. 4, 1902, S. D. N. Y.

3831

3832 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Room in the Borough of Manhattan, this 14 day of March, 1902.

Present—Hon. GEORGE B. ADAMS, *Judge*.

IN THE MATTER

OF

3833 The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability.

On reading and filing notice of motion with proof of service thereof, for an order opening the default in this case as against the S. S. White Dental Manufacturing Company, and permitting said company to file the claim annexed to said notice, and after hearing Benedict & Benedict for the motion and Edward K. Jones, appearing, but not opposing, it is

3834 Ordered by the Court that the said motion be and the same is hereby granted, and the said company is permitted to file the said claim as prayed for. And the said default is hereby opened.

GEO. B. ADAMS.

UNITED STATES DISTRICT COURT, 3835

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability. 3836

SIR:

Please take notice that we shall move this Court on the 25th day of February, 1902, at the Court Rooms in the Federal Building, in the City of New York, at the opening of court on that day, for an order opening the default in this case as against the S. S. White Dental Manufacturing Company, and permitting said company to file the annexed claim in the above matter, and for such other and further relief as may be just. 3837

Dated New York, February 21, 1902.

Yours, &c.,
BENEDICT & BENEDICT,
Proctors for The S. S. White Dental Manufacturing Company.

To EDWARD K. JONES, Esq.,
Proctor for Petitioner.

3838 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "BOURGOGNE," for limitation of liability.

3839

CITY AND COUNTY OF PHILADELPHIA, State of Pennsylvania, } ss.:

W. H. GILBERT, having been duly sworn according to law, deposes and says that he is the General Manager of The S. S. White Dental Manufacturing Company, a corporation created by and existing under the laws of the State of Pennsylvania, and having its principal office at the corner of Twelfth and Chestnut streets, in the City of Philadelphia. That on the 30th day of June, 1898, The S. S. White Dental Manufacturing Company delivered to the Compagnie Generale Transatlantique, for transportation by the steamship *La Bourgogne,* three
3840 cases and one trunk of dental goods, consigned to Jules M. Ravel, care of P. A. Kolliker & Company, Zurich, care of Kane & Company, Havre, receiving therefor the bill of lading, of which an exact copy is attached to this affidavit, marked "Exhibit A."

The dental goods contained within the three cases and one trunk so delivered to the Compagnie Generale Transatlantique were of the value of $17,108.40.

By the sinking of the steamship *La Bourgogne,* on the 4th day of July, 1898, in the Atlantic Ocean,

off the banks of Newfoundland, the dental goods so 3841
shipped became a total loss, and no part of them have ever been recovered by The S. S. White Dental Manufacturing Company or delivered to the consignee.

At the time of the shipment of these goods The S. S. White Dental Manufacturing Company had an open policy of insurance issued by The Delaware Insurance Company of Philadelphia, under the terms of which this shipment was believed to be insured. After the loss of the goods became known, a controversy arose between The S. S. White Dental Manufacturing Company and The Delaware Insurance Company of Philadelphia as to the said insur- 3842
ance; whereupon, on the 5th day of February, 1901, The S. S. White Dental Manufacturing Company filed its libel in admiralty against The Delaware Insurance Company of Philadelphia, in the United States District Court for the Eastern District of Pennsylvania. The said cause was diligently prosecuted and voluminous proofs were taken in the said cause, and thereafter, after a full hearing, on the 6th day of January, 1901, a decree was entered in favor of libellant for the sum of $19,369.51, with costs.

From this decree, The Delaware Insurance Company of Philadelphia took an appeal to the United 3843
States Circuit Court of Appeals for the Third Circuit, which appeal, having been fully argued before the said Court, resulted in a decree, entered May 27th, 1901, whereby the decree of the District Court was reversed and the cause remanded with directions to the District Court to enter a decree dismissing the libel.

Thereafter, The S. S. White Dental Manufacturing Company, on the 12th day of November, 1901, filed its petition in the Supreme Court of the United States for a writ of *certiorari* directed to the United States Circuit Court of Appeals for the Third Cir-

3844 cuit for a review of the judgment of the said Court. Which petition, having been submitted with printed briefs of counsel, was, on the 13th day of January, 1902, denied by said Court.

Throughout these proceedings, which were prosecuted with diilgence, The S. S. White Dental Manufacturing Company asserted and believed that the shipment of goods made by it upon *La Bourgogne* was insured by The Delaware Insurance Company of Philadelphia, and confidently expected to recover the value of said goods from said insurance company.

The decision of the United States Circuit Court
3845 of Appeals denying the right to recover from the insurance company for the value of these goods was based solely upon the ground that under the terms of the policy they were not insured.

The S. S. White Dental Manufacturing Company has never received any notice of the petition of the Compagnie Generale Transatlantique for limitation of liability, nor did it have any knowledge of the pendency of these proceedings until after the final determination of the suit against the insurance company by the Supreme Court of the United States, as above recited. After this decision it immediately sought to ascertain and enforce its rights against
3846 the carrying company under the bill of lading, when for the first time the present proceedings were brought to its notice.

(Signed) W. H. GILBERT.

Sworn to and subscribed before me this 19th day of February, A. D. 1902.

(Signed) EDWARD F. SIMPSON, JR.,
[SEAL.] Notary Public.
Commission expires Feb'y 27th, 1905.

(Endorsed)—Notice of Motion to open default for S. S. White Dental Mfg. Co.—Filed, March 18/02.

Exhibit A.

3847

(Copy bill of lading)

(Across left hand end) No inflammable or dangerous article, such as medical fluids, ether, chloroform, oil, alcohol, gunpowder, percussion caps, vitriol, tar, turpentine, acids, matches, etc., shall be received on board the steamers of this company, without a previous authorization from the Board of Directors. Any person who by means of misrepresentation having shipped any of the aforesaid articles will be liable to a penalty of 2,000 francs to this company, besides the responsibility for damages, and from the misrepresentation, and the pen- 3848
alties fixed by the Laws of France of the 18th of June, 1870.

20 M-30-12-97. A. J. L. 2696.

COMPAGNE GENERALE TRANSATLANTIQUE

FRENCH MAIL STEAMSHIPS.

Paris.
Main Office
6 Rue Auber.

Freight Office
5 Rue Des Mathurins.

Havre.
General Agency
43 Quai D'Orléans.

[OGT]

Line from Havre to New York.

General Agency for United States and Canada,
3 Bowling Green.
Wharf,
Pier 42, N. R., foot of Morton St., New York.

3849

JULES M. RAVEL,
c/o P. A. Kolliker & Co.,
Zurich.

c/o Kane & Co.,
Havre.

Freight on 24/5 at 10.00 per 40 fr	$6.10
Primage 5 per cent	31
	$6.41
Advance Charges	7.15
5 per cent	35
	$7.50

(Exchange at rate of 5.25 fcs. to Dollar.)

3850 RECEIVED, in apparent good order and condition, by THE COMPAGNIE GENERALE TRANSATLANTIQUE, from Healy and Earl, Forwarding Agents, Old Pier 41, North River, to be transported by the good French Steamship *La Bourgogne*, now lying in the Port of NEW YORK, and bound for HAVRE, or failing shipment by said steamer, in and upon the next Steamer.

Three (3) Cases Dental Goods
One (1) Trunk " "

being marked and numbered as per margin shippers weight, (quality, contents and value unknown,)
3851 and to be delivered in like good order and condition at the port of Havre.

UNTO Kane and Co.,

or to his or their assigns, he or they paying freight and charges on the said goods on the gross intaken weight and measurement as per margin, or as may otherwise result on verification of same at port of destination. Cost of weighing at the expense of the merchandise. General average payable according to York-Antwerp, Rules 1890.

IT IS MUTUALLY AGREED that the ship shall have liberty to sail with or without pilots, that the Carrier shall have liberty to convey goods in lighters to and from the ship at the risk of the owners of the
3852 goods; and, in case the ship shall put into a port of refuge, or be prevented from any cause from proceeding in the ordinary course of her voyage, to transship the goods to their destination by any other steamship; that the carrier shall not be liable for loss or damage occasioned from fire from any cause or wheresoever occurring; by barratry of the Master or crew; by robbers; by arrest and restraint of princes, rulers or people, riots, strikes or stoppage of labor; by explosion, bursting of boilers, breakage of shafts or any latent defect in hull, ma-

chinery or appurtenances, or unseaworthiness of 3853
the ship, even existing at time of shipment or sailing on the voyage, provided the owners have exercised due diligence to make the vessel seaworthy; by heating, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description; nor for risk of craft, hulk or transshipment; nor for any loss or damage caused by the prolongation of the voyage, and that the carrier shall not be concluded as to correctness of state- 3854
ments herein of weight, quality, contents and value.

IT IS MUTUALLY AGREED that this shipment is subject to all the terms and provisions of, and all the exemptions from liability contained in, the Act of Congress of the United States, approved on the 13th day of February, 1893.

1.—IT IS ALSO MUTUALLY AGREED that the Carrier shall not be liable for articles comprised in Section 4281 of the Revised Statutes of the United States, nor for any package exceeding the sum of $100 in value, unless notice of true character and value thereof is given and same is entered in the bill of 3855
lading.

2.—ALSO that Shippers shall be liable for any loss or damage to Ship or Cargo caused by inflammable, explosive or dangerous goods, shipped without full disclosure of their nature, wehther such Shipper be Principal or Agent; and such goods may be thrown overboard or destroyed at any time without compensation.

3.—ALSO that the Carrier shall have a lien on the goods for all freight, primages and charges, and

3856 also for all fines and damages which the Ship or Cargo may incur or suffer by reason of the incorrect or insufficient marking, numbering, or addressing of the packages or description of their contents.

4.—ALSO that in case the Ship shall be prevented from reaching her destination by Quarantine, the Carrier may discharge the goods into any Depot or Lazaretto, and such discharge shall be deemed a final delivery under this contract, and all the expenses thereby incurred on the goods shall be a lien thereon.

3857 5.—ALSO that the Ship may commence discharge immediately on arrival and discharge continuously, the Collector of the Port being hereby authorized to grant a general order to discharge immediately on arrival, and if the goods be not taken by the Consignee within such time as is provided by the regulation of the Port of discharge, they may be stored by the Carrier at the expense and risk of the owner.

6.—ALSO that full weight is payable on damaged or unsound goods; but no freight is due on any increase in bulk or weight caused by the absorption of water during the voyage.

3858

7.—ALSO that if on a sale of the goods at destination for freight and charges, the proceeds fail to cover said freight and charges, the Carrier shall be entitled to recover the difference from the shipper.

8.—ALSO that in the event of claims for short delivery when the Ship reaches her destination, the price shall be the market price at the port of *destination* on the day of the Ship's entry at the Custom House, less all charges saved.

9.—ALSO that merchandise on wharf awaiting 3859
shipment on delivery be at Shipper's risk or loss or damage by fire and or flood, not happening through the fault or negligence of the owner, master, agent, or manager of the vessel.

10.—ALSO that this Bill of Lading, duly endorsed, be given up to the Ship's Consignee in exchange for delivery order.

11.—ALSO that the freight prepaid will not be returned, goods lost or not lost.

12.—ALSO that parcels for different Consignees collected or made up in single packages addressed to one Consignee pay full freight on each parcel. 3860

13.—ALSO fault or neglect of Master or crew in the navigation or management of the Ship shall not relieve the Consignees or owners of the cargo from contributing their proportion in General Average, both as to Ship as well as cargo.

AND FINALLY, in accepting this Bill of Lading, the Shipper, Owner and Consignee of the goods and the Holder of the Bill of Lading agree to be bound by all of its stipulations, exceptions and conditions, whether written or printed, as fully as if they were all signed by such Shipper, Owner, Consignee, or Holder. 3861

IN WITNESS WHEREOF, the Master or agent of the said ship hath affirmed to three Bills of Lading, all of this tenor and date, one of which being accomplished, the others to stand void.

COMPAGNIE GENERALE TRANSATLANTIQUE,
(For the Captain)
(signed) M. G. DENNIS.

Dated at New York, June 30/1898.

Original bill of lading offered in evidence and marked Exhibit A, May 6/03. (Page .)

3862 At a Stated Term of the District Court of the United Staes for the Southern District of New York, held at the U. S. Court House and Post Office Building in the City of New York on the 25th day of September, 1902.

Present—Hon. GEORGE B. ADAMS, *District Judge.*

IN THE MATTER

OF

3863 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, etc., for limitation of liability.

On the under-written consent it is

Ordered that Edward K. Jones, Esq., counsellor-at-law, be and he is hereby substituted in the place and stead of Messrs. Jones & Govin as proctor for the above-named petitioner.

GEO. B. ADAMS,
U. S. District Judge.

3864

We hereby consent to the entry of the foregoing order.

Dated New York, September 12, 1902.

COMPAGNIE GENERALE TRANSATLANTIQUE,
OSCAR R. CAUCHOIS,
Assistant Generale Agent for U. S. & Canada,
Petitioner.
JONES & GOVIN,
Proctors for Petitioner.

UNITED STATES OF AMERICA, } ss.: 3865
Southern District of New York, }

On this 12th day of September, 1902, before me personally came Oscar R. Cauchois, Acting and Assistant General Agent of the above-named petitioner, to me known and known to me to be the individual who executed the foregoing consent and who acknowledged to me that he executed the same as the act and deed of the said petitioner.

FREDERICK KOPF,
Notary Public (73),
N. Y. Co.

[SEAL.]

(Endorsed)—Order of Substitution.—Filed Sept. 25, 1902. 3866

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the steamship "LA BOURGOGNE," for limitation of liability. 3867

TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK:

I, THOMAS ALEXANDER, United States Commissioner, to whom there were referred, by an interlocutory decree filed in the above-entitled proceed-

3868 ing on the 1st day of April, 1902, "all claims, other than those for alleged damages for alleged negligence resulting in loss of life (which are hereby excluded), to take testimony as to the amount of such claims and to report the same to the Court, with his opinion, with all convenient speed," do report as follows:

Claim of the S. S. WHITE DENTAL COMPANY:

This claim is to recover the value of property, consisting of dental supplies, shipped on the *La Bourgogne,* the value of which I find to have been $17,108.40. As the Court, however, in its opinion
3869 in this case, has determined that the steamer *La Bourgogne* was in all respects seaworthy at the time of her sailing on the voyage in question, I find that the provisions of the Harter Act are applicable here, and that this claim must be disallowed.

The claims of PAULINE HENUY, as administratrix of Juliette Cicot; of HENRY HYER KNOWLES, as administrator of Gertrude Lalla Rookh Knowles; of WILLIAM C. PERRY, as administrator of Kate M. Perry, Florence Perry and Sadie Perry, and of JOHN PERRY, as next of kin of Katherine Perry and Albert Perry, are all for the recovery of the value of personal effects lost in the collision in question.
3870 The petitioner seeks to limit the amount of the recovery on each of these claims by putting in evidence a ticket purporting to be one similar to the tickets issued by the steamship company at the time of the accident in question. One of the provisions contained upon said ticket, marked "5," reads: "In case of damage to or total loss of baggage, for which the company or the captain may be responsible, the liability is not to exceed $100 in first class and $60 in second class, regardless of the number of pieces or their contents, as the passengers should have their baggage insured for its full value on the

company's open policy" (Petitioner's Exhibit No. 3871
36). In the ticket offered in evidence the clause thus quoted is found on the face of the ticket, and is a portion of the contract of the company with the passenger. The evidence offered by the company to sustain their contention that this clause was on the face of passenger tickets issued by them for passage upon the steamer *La Bourgogne* is that of Eugene D. Bocande, who testifies as follows:

"Q. Have you brought with you the form of passenger ticket of the French Line? A. Yes, sir. I produce it.

"Q. Is this the form that was in use at the time of the disaster to the *Bourgogne?* A. This is the 3872
shape of the ticket.

"Q. Is it the form in the letters? A. The same exactly, I think.

"Q. You don't mean to say that there had not been changes? A. I don't know.

"Q. Is that the form that was in use in 1898? A. I suppose so.

"Q. Are those the only stipulations that were in the tickets that were used in 1898? A. I can't answer that exactly. If I remember correctly I answered that to Mr. Benedict.

"Q. Was there any other form of ticket in use in 1898? A. I don't think so." 3873

The witness then goes on to testify that the limit of recovery by the three classes of passengers was $100 for first class, $60 for second class, and $30 for third class, and this is all the evidence offered by the company to sustain their contention that the form, Ex. 36, was the form in use by the company at the time of the accident.

Mr. A. Gordon Murray, a witness called for the claimants, a lawyer of repute and standing at this bar, testifies that shortly after the collision he called at the office of the company, and interviewed Mr. Faguet, who was the agent of the company in

3874 charge of its office in Bowling Green, and requested of him an inspection of the form of the company's ticket then in use. A ticket was shown him, and the ticket thus shown had the conditions printed only on the back, with no reference to the same on the face of the ticket. He also testifies to having inspected, in the summer of 1898, a ticket issued by the petitioning company to a Mrs. le Gallon for a passage from New York to Havre; that the conditions were on the back of the ticket; that the conditions on Mrs. le Gallon's ticket was in French; that she read them to him, he looking over her shoulder at the time; and that she said to him,
3875 "You cannot possibly recover for Mrs. Henuy because they have the stipulation on the ticket." It seems strange the company is unable to produce more positive proof upon this point. In view of the uncertainty of the evidence of Mr. Bocande, and the positiveness with which Mr. Murray testifies as to the conditions on the ticket and to their being on the back of the ticket, I must find the company has failed to prove that the ticket, Ex. 36, is the form of ticket issued by the company to passengers on *La Bourgogne,* and that the conditions then used by the company, such as they were, were on the back of the ticket.

3876 No proof is offered that the petitioner called the attention of the holders of these tickets, or their representatives, to the conditions upon the back of the ticket, or that any of these persons read those conditions, and under the rule laid down in the case of *The Majestic* (166 U. S., 375) I must find that these claimants are entitled to recover the value of their personal effects, as follows:

PAULINE HENUY, as administratrix of Juliette Cicot:

For loss of money	$1,584
" " " personal effects	1,218
Total	$2,802

HENRY HYER KNOWLES, as administrator of Ger- 3877
trude Lalla Rookh Knowles:

For loss of personal effects.....$2,000

This claimant has proved loss of property of very much greater value, but I find only the face of the claim as originally submitted.

WILLIAM C. PERRY, as administrator of Kate M. Perry:

For loss of personal effects.....$4,277.50
" " " money 1,000.00

Total $5,277.50

WILLIAM C. PERRY, as administrator of Florence 3878
Perry:

For loss of personal effects.....$1,000
" " " money 50

Total $1,050

WILLIAM C. PERRY, as administrator of Sadie Perry:

For loss of personal effects.....$1,000
" " " money 50

Total $1,050

JOHN PERRY, as next of kin of Katherine Perry 3879
and Albert Perry:

For loss of personal effects.....$350

LEWIS DELFONTI, for loss of personal effects and for personal injuries:

The personal effects I value at.....$182
His personal injuries consisted of certain bruises, which do not seem to me have been of a very severe character, and I fix his damages, therefore, at..... 250

Making a total of.....$432

3880 HENRY CIRRI, for loss of personal effects and for personal injuries:

His personal effects I value at.....	$768
His personal injuries seem to have been of somewhat the same character as those suffered by Delfonti, and I fix his damages, therefore, at the same amount	250
Making a total of.....	$1,018

The claim of GEORGE DESLIONS is for $50,000, the alleged value of a collection of curios, largely of
3881 North American Indians, lost on the *La Bourgogne*. The facts in regard to this claim are as follows. The claimant, Mr. Deslions, is a Frenchman who has lived in this country about fourteen years. During that time he has been employed in dealing in curios, and, in gathering what he called his collection of curios. He seems to have visited many parts of this country, and had a very considerable collection at his rooms here in New York. This collection was visited from time to time by various gentlemen, who appeared as witnesses in the case, and testified to having seen it; that it was of great value; that many of the objects con-
3882 tained in it were exceedingly rare; and that some of them could not be replaced. The claimant testifies that his wife and child sailed on the *Bourgogne* as third-class passengers; that he had made up his mind to either sail on her or on another vessel of the line within a short time thereafter, and that at the last moment he decided not to go on the *Bourgogne*, but that his wife and child sailed on her; that on the morning of the steamship's departure his collection, contained in about a dozen trunks, was sent down to the steamship pier, and to substantiate this he produces the expressman and two assistants who carted the trunks containing the

collection and delivered them at the portion of the 3883
steamer's pier set aside for the baggage of third-class passengers. Mr. Deslions testifies to having had some trouble on the pier with the employee of the company in charge of the baggage, who had marked the same for delivery at Basle, while he wanted it delivered at Havre; that he appealed to Mr. Faguet, protesting against what he considered an injustice, and Mr. Faguet instructed the man in charge to change the place of destination in accordance with Mr. Deslions' desires; that the baggage was weighed, and an additional charge, in the neighborhood of $39, paid because of excess of weight. The agent of the company, Mr. Faguet, 3884
and Mr. Cauchois, the general freight agent, both testify this collection could not have been shipped as freight for the reason that it is a rule of the Company no freight shall be received upon the day of the departure of a steamer; that freight is never received unless a bill of lading in regular form is prepared and issued therefor; and that no such bill of lading was issued by the company for this shipment. Mr. Deslions also testifies no bill of lading was given to him; and that all he received was a slip, or countermark. The counsel for the company, in his argument, also insists that these trunks were not shipped as freight but only in connection with the passage ticket issued to the 3885
wife of the claimant. I am of the opinion, therefore, that the trunks in question went aboard the steamship *La Bourgogne* as a part of the baggage of the claimant's wife, and that claimant is entitled to recover the value thereof. The collection consisted of a large number of articles, all of which have been lost, together with all papers and books bearing upon them. From their very nature it is hard to give an intelligent description of them. And there are few persons competent to testify as to their value. This makes the ascertainment of

3886 their value a very difficult problem. Mr. Deslions has given a description of the articles in his collection from memory, assisted by a list made shortly after their loss, by another list made some time before for use in applying for insurance, and by some photographs in his possession. This description is to some extent corroborated by the witnesses Grinnell, Mason, Tonnele, Haywood, and others. The values given by Mr. Deslions of the different articles are perhaps somewhat exaggerated, but are in many cases sustained by the witness Grinnell, a man of great intelligence, who had made a study of Indians and Indian curios for over thirty years.

3887 Some differences exist between them in their estimates, but on the whole I think Mr. Grinnell substantially sustains Mr. Deslions' valuation.

After a careful consideration of the evidence of value produced by the claimant and also by the petitioning company, I have come to the conclusion that twenty-five thousand (25,000) dollars is a fair valuation to put upon the property lost by this claimant.

All of which is respectfully submitted.

New York, May 5, 1904.

THOMAS ALEXANDER,
U. S. Commissioner.

3888 (Endorsed)—Report on claims.—Filed May 9, 1904.

To

MESSRS. ALEXANDER & COLBY,
Proctors for Henry Hyer Knowles, administrator, etc.,
120 Broadway,
New York City.

MESSRS. BULLOWA & BULLOWA,
Proctors for Delfonti & Cerri,
31 Nassau Street,
New York City.

UNITED STATES DISTRICT COURT. 3889

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "BOURGOGNE," for a limitation of liability.

3890

The S. S. White Dental Company except to the Report of the Commissioner in this matter as far as the same relates to the claims of the said S. S. White Dental Company, on the following grounds:

FIRST.—Because the report states that the Court in its opinion in this case has determined that the steamer *La Bourgogne* was in all respects seaworthy at the time of her sailing on the voyage in question, whereas the Court did not so determine.

SECOND.—Because the report finds that the provisions of the Harter Act are applicable here. 3891

THIRD.—Because the Report finds that this claim must be disallowed.

FOURTH.—Because the Report did not find that the Petitioner had not furnished the proof requisite under the Harter Act to relieve it from liability for the loss of the property of the S. S. White Dental Company.

3892 FIFTH.—Because the report did not find that the Petitioner had not used due diligence to make the steamer *La Bourgogne* in all respects seaworthy and properly manned, equipped and supplied.

BENEDICT & BENEDICT,
Proctors for the S. S. White Dental Company.

(Endorsed)—Exceptions to Commissioner's Report, U. S. District Court.—Filed May 9, 1904. S. D. of N. Y.

3893 IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, to limit its liability as owner of the steamship "LA BOURGOGNE."

NEW YORK, May 8th, 1902.

In the Matter of the Claim of the S. S. White Dental Company.

3894

Met pursuant to notice.

Present: THE COMMISSIONER, MR. BENEDICT, for the Claimant; MR. EDWARD K. JONES, by MR. KOPF, for the Petitioners.

Mr. Benedict produces notice of reference with admission of service signed by Edward K. Jones, Attorney for Petitioners.

CHARLES H. HEITE, a witness called on behalf of 3895
the claimant, being duly sworn, testifies as follows:

EXAMINED BY MR. BENEDICT:

Q. Are you connected with the S. S. White Dental Company of Philadelphia? A. Yes, sir.

Q. In what capacity? A. I have charge of the wholesale invoice department; invoicing all the goods sold at wholesale.

Q. And how long have you had charge of that? A. I have had charge of that now about eight years.

Q. Did that Company have some goods on board the *La Bourgogne* at the time she was lost? A. Yes, sir. 3896

Mr. Kopf: I object to that question.

Objection overruled. Exception taken.

Q. What packages? A. I cannot say from memory.

Mr. Benedict: Well, look at whatever will tell you.

The Witness (referring to book): There are two boxes and one trunk; in one of the boxes there was 29 packages of miscellaneous goods, and the other 39 packages of teeth. In the trunk there was 56 packages of teeth. 3897

Q. What was the amount—the value of those goods?

Objected to as incompetent.

Q. As you have had charge of the wholesale department, what are your duties? A. Make out all the invoices of the goods sold at wholesale.

Q. And did you make out the invoice for these goods? A. I did not personally make this invoice out; it was made out under my supervision; I

priced this invoice and put the discount opposite each item.

Q. To fix the value— A. Of each item, yes, sir.

Q. What was the value of—

Mr. Kopf: I object to that.

Objection overruled. Exception.

A. $17,108.40.

Q. Where were those goods to go, if you can tell? A. They were to go to Mr. Jules M. Ravel, care of Messrs. P. A. Kolliker, Zurich, Switzerland.

Q. And did the S. S. White Dental Company ever recover anything for the loss of the goods? A. Not to my knowledge, they have not, sir.

CROSS-EXAMINATION BY MR. KOPF:

Q. Have you the order which was sent for these goods? A. I have not it with me; no, sir.

Q. Do you know when that order was received? A. I cannot say the date; it was received prior to July 1st, that was the date the invoice was made out; the date of shipment.

Q. Have you any knowledge of the circumstances under which these goods were shipped to Mr. Ravel? A. In what way, how, might I inquire?

Q. I want to know all about this transaction? A. Mr. Ravel is our representative in Europe and the Continent, and this was an order that he, being in Europe, he leaves here about the first of May every year, and we forward him at different intervals the orders that he may have notified us so to do.

Q. (By Mr. Benedict) Sent him the goods ordered, you mean? A. Yes, sir.

Q. The goods that were ordered; you said you forwarded the orders; you mean the goods ordered? A. The goods ordered, yes, sir.

Q. (By Mr. Kopf) How does he represent you? 3901
A. He is our foreign salesman.

Q. And the invoice was made out in his name?
A. Made out in his name.

Q. You know how the values of this merchandise are fixed? A. No; all that I know of the value—this is our regular catalogued value, less the discount to the wholesale trade.

Q. (By Mr. Benedict) When you say "this," what do you mean by "this"? A. "These," I should have said.

Q. What, prices? A. The prices in the invoices were made up from our regular catalogue prices, less the discount to the trade, the wholesale trade. 3902

Q. (By Mr. Kopf) Mr. Heite, you could not include Mr. Ravel's order as being an order from the wholesale trade, could you? A. Yes, sir; we could.

Q. How? A. Because he receives orders on the other side and forwards them to us to be filled and to be sent to him.

Q. If you were sending this merchandise to somebody who would use it, what would the values of these goods have been; not to resell it, but to use it? A. To use it? It would be— For instance; here is an item, 9½ dozen engine drills, ten dollars and a half a dozen; that would be the retail price for these goods to anyone outside of the dealer. 3903

Q. And what is the price to Mr. Ravel? A. Less 30 per cent.

Q. Do you know what the actual cost of the production of these goods is? A. I do not, sir.

Q. How do you know these goods were shipped on the *La Bourgogne*? A. Well, as far as I am concerned, personally, I don't know that they went on the *La Bourgogne* any more than it is marked here "steamship *La Bourgogne*," and it was marked in that way whenever a shipment has been made. I could not say; I didn't see them delivered on the

3904 *La Bourgogne,* although I know this, that the shipment was gotten ready, this invoice was made out, for the shipment that was to go on the *La Bourgogne,* but I cannot say whether this went on the *La Bourgogne* or not, certainly.

Mr. Kopf asks for the production of the book to which witness has had reference.

Mr. Benedict states that he will have a copy made of the page referred to and send to the attorney for the petitioners.

Q. (By Mr. Benedict) How were those packages marked, Mr. Heite, the boxes and the trunk? A. I
3905 presumed they were marked Mr. Jules M. Ravel, care of Mess. P. A. Kolliker & Co., Zurich, Switzerland.

The signing of testimony by the witness is hereby waived.

Petitioners' counsel reserves the right to put in proof in behalf of the petitioner until all of the claimants have put in their direct proof, and also reserves the right to object to the proofs now offered; such proofs or objections, should he desire to offer any, to be made upon four days' notice to the other side.

3906 Hearing adjourned without date.

NEW YORK, May 6, 1903.

Met pursuant to adjournment.

Present, THE COMMISSIONER, MR. R. D. BENEDICT.

Mr. Benedict states that he gave written notice to the other side that he should take testimony in the claim of the S. S. White Dental Company at this time.

WALLACE BRINCKERHOFF, being duly sworn and 3907
examined as a witness for the S. S. White Dental Company, testifies:

BY MR. BENEDICT:

Q. In the year 1898 were you connected with the Healy & Earl forwarding agents? A. Yes.

Q. Do you know of that company receiving some goods from the S. S. White Dental Company to be shipped on the *Bourgogne?* A. Yes.

Q. Did you get a receipt for the goods from the company? A. From the French Line, yes, sir.

Q. And on surrendering that receipt did you receive this bill of lading that I show you? A. That 3908
is the bill of lading that we received; I received a bill of lading from the French Line, this bill of lading.

Q. Did you forward that bill of lading to the S. S. White Dental Company? A. That I couldn't say, where that bill of lading came from.

Q. Did you forward a bill of lading to the S. S. White Dental Company? A. I forwarded one bill of lading to the S. S. White Dental Company.

Q. You are not positive whether that is the bill of lading, are you? A. That I couldn't say, about the S. S. White bill of lading.

Q. Is there anything that will define it? A. The 3909
only thing I can say is that one bill of lading went to P. A. Kanes & Company and one to Philadelphia.

Q. Don't you know who that went to in Philadelphia? A. That would certainly go to the S. S. White Dental Manufacturing Company.

The bill of lading is offered in evidence, and marked Exhibit A of this date. (Page 1288.)

Mr. Kopf, representing the French Line, appears, and the testimony of the witness is read over to him.

Mr. Kopf: I object to the introduction of the

3910 bill of lading, on the ground that the same has not been proven.

Objection withdrawn.

Mr. Benedict: I can testify that I received this bill of lading from the S. S. White Dental Company.

Mr. Kopf: I will take your statement if you will produce the letter that came with it.

Mr. Benedict: I haven't got it here, but I will produce it.

CROSS-EXAMINED BY MR. KOPF:

3911 Q. What are your duties in the firm of Healy & Earl? A. General clerk work in the office.

Q. Will you state what some of that work is? A. It is such as making out bills of lading, and bookkeeping.

Q. How do you know that these goods came from the S. S. White Dental Company? A. We generally get an invoice from them and they are stencilled on the side with the S. S. White Dental Manufacturing Company's seal, and we also get an invoice from them.

By Mr. Benedict: Q. The cases are stencilled?

3912 A. Yes.

By Mr. Kopf: Q. Did you personally get the invoice? A. I have got the invoice here in my pocket now.

Q. I asked you if you received that invoice from the S. S. White Dental Company personally? A. Not personally; no.

Q. When did you first see this invoice that you say you have in your pocket now? A. At the time that we received the goods.

Q. You say "we received the goods"; who do you mean by "we"? A. Healy & Earl.

Q. Is it part of your business to receive these goods? A. Yes, sir. 3913

Q. When did you receive these goods? A. Well, I couldn't state that.

Q. I ask you to look at Exhibit A of May 6th and to state in whose handwriting it is? A. That is my handwriting.

By Mr. Benedict:

Q. The signature isn't yours? A. No.

By Mr. Kopf:

Q. There is nothing on that bill of lading to show that the goods came from the S. S. White Dental Company? A. There is nothing on the bill of lading to show it. 3914

Q. Do you know by what means of transportation these goods were delivered to you? A. The United States Express Company.

Q. Where do you get that information? A. I have evidence in my pocket to show it.

Witness produces paper and hands it to counsel for the French Line, who examines it.

Redirect-examination by Mr. Benedict:

Q. This filling out of freight, is that in your writing? A. No, sir.

Q. Is this paper that you produce the invoice from the S. S. White Dental Manufacturing Company? A. Yes, sir. 3915

Q. And is the paper attached to it the express receipt? A. That is the receipt that we get for the money that we advance.

Q. And this bill of lading was made out in accordance with that invoice, was it? A. Yes, and from the receipt; yes.

The invoice and receipt are offered in evidence, the invoice is marked Exhibit B of this

3916 date; the receipt is marked Exhibit C of this date, and it is agreed that copies shall be substituted.

S. S. White Dental Company rests.

Mr. Kopf asks for a week to decide whether the petitioner will put in any proof.

Adjourned till May 12th at two P. M.

(Copy.)

3917 **Exhibit "C," May 6, 1903.**

(21)

New York, June 29 1898

M Vitesse a/c Healy & E

To The United States Express Co., Dr.

For Freight on 3 Bx 1 Tk from.....$ 615

Expense (Advance Charges).....

$ 615

JUN 29 1898

Received Payment for the Proprietors, P D Emary.

3918

Exhibit B, May 6, 1903.

3919

Philadelphia, June 28th 1898.

Mess Healy & Earl

We forward freight as below, which please deliver to.....
and return bills of lading; also, bill of charges, if advance payment is required.

Clearance Sheet for.....

Address.	Trunk	Boxes	Gro. Wgt. Lbs.	Net Wgt. Lbs.	Measurements.
	1	3	....	....	.....

Teeth.	Machinery.	Insts.	Plaster	Miscel.	Total.
$	$	$	$	$	$
4500	....	200	....	500	5200

Petete Vitesse
Jules M. Ravel
c/o P. A. Kolliker & Co
Zurich

3920

c/o Kane & Co
Harve.

C B/L to P. A. K. & Co.,
per La Touraine
July 8

B/L to Kane & Co 615
per La Bourgogne July 1 100

B/L to Phila July 1 715

The S S White Dental Manufacturing Co.
Geo. W. Weeker 1y.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

3921

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

SIRS:

Please take notice that Thomas Alexander, United States Commissioner, to whom were re-

3922 ferred the matter of the claims filed herein, has rendered his report, and the same has been this day duly filed in the office of the Clerk of the Court, and that the undersigned will move this Court, at a stated term thereof, to be held in the Federal Building, in the Borough of Brooklyn, on the 13th day of May, 1904, at the opening of Court, or as soon thereafter as counsel can be heard, for an order confirming in all respects the said report and for the entry herein of a final decree pursuant to the law and practice of this Court.

Dated New York, May 9th, 1904.

3923 Yours respectfully,
A. GORDON MURRAY,
Proctor for Perry and Henuy,
34 Pine Street,
Borough of Manhattan,
New York City.

To EDWARD K. JONES, Esq.,
Proctor for the Petitioner,
49 Wall Street,
New York City.

MESSRS. BENEDICT & BENEDICT,
Proctors for George Deslions and others, claimants,
New York City.

3924

UNITED STATES DISTRICT COURT, 3925

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

3926

SIRS:

Please take notice that Thomas Alexander, United States Commissioner, to whom was referred the matter of the claims filed herein, has rendered his report, and that the same has this day been duly filed in the office of the Clerk of the Court, and that the undersigned will move this Court at a stated term thereof, to be held in the Federal Building in the Borough of Brooklyn, on the 13th day of May, 1904, at the opening of Court or as soon thereafter as counsel can be heard, for an order confirming in all respects the said report and for the entry herein of a final decree pursuant to the law and practice of this Court. 3927

Dated New York, May 9, 1904.

Yours respectfully,

ALEXANDER & COLBY,

Proctors for Henry Hyer Knowles, as Administrator of the goods, etc., of Gertrude Lallarookh Knowles, deceased,

120 Broadway,

Borough of Manhattan,

City of New York,

N. Y.

3928 To EDWARD K. JONES, Esq.,
Proctor for the Petitioner,
49 Wall Street, New York City.
MESSRS. BENEDICT & BENEDICT,
Proctors for George Deslions and others, claimants,
68 Wall Street, New York City.
A. GORDON MURRAY, Esq.,
Proctor for Perry & Henuy, claimants,
34 Pine Street, New York City.

DISTRICT COURT OF THE UNITED STATES,

3929

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

3930

EXCEPTIONS ON BEHALF OF THE PETITIONER TO THE REPORT OF THOMAS ALEXANDER, ESQUIRE, THE COMMISSIONER IN THIS CAUSE, DATED MAY 5TH, 1904, AND FILED IN THIS COURT ON THE 9TH DAY OF MAY, 1904, TO WIT:

FIRST.—That the Commissioner erred in awarding Pauline Henuy, as administratrix of Juliette Cicot, deceased, the sum of Two thousand, eight hundred and two dollars ($2,082) for loss of money and personal effects.

SECOND.—That the Commissioner erred in awarding Henry Hyer Knowles, as administrator of Gertrude Lalla Rookh Knowles, deceased, the sum of Two thousand dollars ($2,000) for loss of personal effects. 3931

THIRD.—That the Commissioner erred in awarding William C. Perry, as administrator of Kate M. Perry, deceased, the sum of Five thousand, two hundred and seventy-seven and 50/100 dollars ($5,277.50) for loss of money and personal effects.

FOURTH.—That the Commissioner erred in awarding William C. Perry, as administrator of Florence Perry, deceased, the sum of One thousand and fifty dollars ($1,050) for loss of money and personal effects. 3932

FIFTH.—That the Commissioner erred in awarding William C. Perry, as administrator of Sadie Perry, deceased, the sum of One thousand and fifty dollars ($1,050) for loss of money and personal effects.

SIXTH.—That the Commissioner erred in awarding John Perry, as next-of-kin of Katherine Perry and Albert Perry, deceased, the sum of Three hundred and fifty dollars ($350) for loss of personal effects. 3933

SEVENTH.—That the Commissioner erred in awarding Lewis Delfonti the sum of Four hundred and thirty-two dollars ($432) for loss of personal effects, and as damages for personal injuries.

EIGHTH.—That the Commissioner erred in awarding Henry Cirri the sum of One thousand and eighteen dollars ($1,018) for loss of personal effects, and as damages for personal injuries.

3934 NINTH.—That the Commissioner erred in awarding George Deslions the sum of Twenty-five thousand dollars ($25,000) for loss of property.

TENTH.—That the Commissioner erred in allowing any sum to the claimant Deslions, for the reason that said Deslions' claim is for damages for an alleged breach of an alleged contract of affreightment made by him with the petitioner; and the Commissioner finds that said contract was never made, but that the trunks in question were part of the baggage of Mathile Faivre, a passenger.

3935 ELEVENTH.—That the Commissioner erred in allowing any sum to the claimant Deslions, for the reason that said Deslions' claim is for alleged damages for the failure to deliver certain personal property "under an agreement with petitioner for a valid consideration received, that the same should be safely transported on said steamship to Havre, France, and there delivered to claimant or his agents," and there is no evidence of the value of said personal property at Havre, France.

TWELFTH.—That the Commissioner erred in finding that the claimant Deslions had a very consider-
3936 able collection at his rooms in New York.

THIRTEENTH.—That the Commissioner erred in finding that various gentlemen testified that the collection of the claimant Deslions was of great value, and that it was of great value.

FOURTEENTH.—That the Commissioner erred in finding that many of the objects contained in the collection of the claimant Deslions were exceedingly rare, and that some of them could not be replaced.

FIFTEENTH.—That the Commissioner erred in finding that the said collection was contained in about a dozen trunks. 3937

SIXTEENTH.—That the Commissioner erred in finding that the trunks were taken by an expressman from the claimant Deslions' apartments to the petitioner's pier, and contained only a collection of curios.

SEVENTEENTH.—That the Commissioner erred in finding that the passenger Mathile Faivre was the claimant Deslions' wife.

3938

EIGHTEENTH.—That the Commissioner erred in finding that the collection consisted of a large number of articles, all of which were lost, together with all the books and papers bearing upon them.

NINETEENTH.—That the Commissioner erred in finding that, from the very nature of the articles testified to by the claimant Deslions, it is hard to give an intelligent description of them.

TWENTIETH.—That the Commissioner erred in finding that the claimant Deslions had given a description of them, and that said claimant's description is corroborated. 3939

TWENTY-FIRST.—That the Commissioner erred in finding that the valuations of the claimant Deslions are, in many cases, sustained by the witness Grinnell, and that the said witness substantially sustained said claimant's valuation.

TWENTY-SECOND.—That the Commissioner erred in finding that the trunks alleged to contain the collection of the claimant Deslions had been marked for delivery at Basle.

3940 TWENTY-THIRD.—That the Commissioner erred in not excluding the claim of the claimant George Deslions on the evidence adduced by the petitioner in opposition thereto.

TWENTY-FOURTH.—That the Commissioner erred in not adopting the evidence of the experts called in behalf of the petitioner as to the value of many of the articles testified to by the claimant George Deslions, inasmuch as their testimony furnished the best, if not the only, legal criterion for a finding in that behalf, as disclosed by the record before him.

3941

TWENTY-FIFTH.—That by reason of the many false statements, contradictions and inaccuracies of the claimants, Deslions, Cirri and Delfonti, and the discrepancies between their claims and testimony, their claims should be excluded, and the Commissioner erred, therefore, in awarding said claimants any sum whatever.

TWENTY-SIXTH.—That the Commissioner erred in awarding any sum whatever to the claimants, for the reason that he not have before him any *competent* evidence to justify his findings, and the claims are not proved with sufficient certainty, and his
8942 awards are based upon mere conjecture and guesswork.

TWENTY-SEVENTH.—That the Commissioner erred in that he did not give proper consideration and weight to the testimony adduced in behalf of the petitioner in opposition to the claims of the claimants.

TWENTY-EIGHTH.—That the Commissioner erred in not finding and enumerating separately the arti-

cles, and their value, for which he made awards, 3943
respectively, to the persons named in the said Commissioner's report.

TWENTY-NINTH.—That the Commissioner erred in not finding whether or not the articles constituted baggage necessary and appropriate for voyage of the claimants, or the decedents referred to in the said report.

THIRTIETH.—That the Commissioner erred in not finding whether or not the awards made for money was necessary for the voyage of the claimants, or the decedents referred to in said report. 3944

THIRTY-FIRST.—That the Commissioner erred in not disallowing all the I claims, under the Act of Congress passed February 13th, 1893 (27 Stats. at Large, p.).

THIRTY-SECOND.—That the Commissioner erred in not finding that the petitioner was entitled to a limitation of its liability to the amount stated in its contract of passage, Petitioner's Exhibit No. 36.

THIRTY-THIRD.—That the Commissioner erred in not finding that the provision of the petitioner's contract of passage, requiring passengers to insure 3945
their baggage, is reasonable.

THIRTY-FOURTH.—That the Commissioner erred in not finding that the contract of passage (Petitioner's Exhibit No. 36) was not properly proved.

THIRTY-FIFTH.—That the Commissioner erred in assuming the consideration of the testimony as to the petitioner's contract of passage (Petitioner's Exhibit No. 36) as that testimony had already been

3946 considered by the Court and the said Exhibit had been admitted in evidence by it without objection.

THIRTY-SIXTH.—That the Commissioner erred in finding that the evidence quoted by the Commissioner was all that was offered by the petitioner to sustain its contention that Petitioner's Exhibit No. 36 was in the form in use by the petitioner at the time of the accident.

THIRTY-SEVENTH.—That the Commissioner erred in finding that it seems strange that the petitioner is unable to produce more positive proof as to the
3947 form of its contract of passage.

THIRTY-EIGHTH.—That the Commissioner erred in finding that the evidence of the witness de Bocande, as to the contract of passage, Petitioner's Exhibit No. 36, is uncertain.

THIRTY-NINTH.—That the Commissioner erred in finding that the witness Murray testified with positiveness as to the condition of the ticket of the petitioner, and that they were on the back thereof.

FORTIETH.—That the Commissioner erred in finding that the conditions of the petitioner's passage
3948 ticket were on the back thereof.

FORTY-FIRST.—That the Commissioner erred in not finding that the notice of the petitioner, requiring passengers to deposit their valuables with the purser of its steamers, is unreasonable.

FORTY-SECOND.—That the Commissioner erred in making the claimants any award for loss of gold, silver, bullion or other precious metals, coins, jewelry, bills of any bank or public body, diamonds or

other precious stones, gold and silver in a manu- 3949
factured or unmanufactured state, and whether wrought up or not wrought up with any other material, or furs contained in any parcel, package or trunk.

FORTY-THIRD.—That the report is so vague, indefinite and contradictory, so erroneous in its recitals of testimony and so evidently based upon the evidence adduced by the claimants without regard to that adduced by the petitioner, that it furnishes no basis for any affirmative action by the Court and ought to be rejected.

3950

FORTY-FOURTH.—That so much of the report as disposes of the claim of George Deslions, in addition to the reasons included in the last preceding exception, ought to be rejected because the award made in favor of said claimant is based upon the finding that the property alleged to have been lost was received on *La Bourgogne* as part of the baggage of claimant's wife, and in so finding the Commissioner must have found that the claimant Deslions wilfully and intentionally swore falsely to his statement of claim, and wilfully and intentionally swore falsely upon the witness stand, before the Commissioner, that said property was shipped as 3951
freight and not as the baggage of his wife, and the Commissioner, therefore, erred in not rejecting the whole of the testimony of said claimant.

FORTY-FIFTH.—That the Commissioner erred in not rejecting the whole of the testimony of the claimant Deslions because, besides testifying falsely as to the shipment of said personal property, the testimony of said claimant is in many other respects so absolutely incredible and so manifestly false that he should have been totally discredited as a witness.

3952 FORTY-SIXTH.—That the Commissioner erred in not finding that the claimant, Henry Hyer Knowles, as administrator of Gertrude Lalla Rookh Knowles, deceased, had no legal capacity to prosecute the claim interposed by him.

FORTY-SEVENTH.—That the Commissioner erred in not finding that the claimant, Pauline Henuy, as administratrix of Juliette Cicot, deceased, had no legal capacity to prosecute the claim interposed by her.

FORTY-EIGHTH.—That the Commissioner erred in
3953 not finding that William C. Perry, as administrator of Kate M., Florence and Sadie Perry, deceased, had no legal capacity to prosecute the several claims interposed by him.

FORTY-NINTH.—That the Commissioner erred in not finding that John Perry, as next-of-kin of Katherine and Albert Perry, deceased, had no legal capacity to prosecute the several claims interposed by him.

Dated New York, May 13th, 1904.

EDWARD K. JONES,
Proctor for petitioner.

3954

(Endorsed)—Exceptions to Commissioner's report. —Filed May 13, 1904.

UNITED STATES DISTRICT COURT, 3955

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability.

June 24, 1904.

3956

THOMAS, *J.*:

The finding of the Commissioner as to each claim is confirmed.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Memorandum.—Thomas, J.—U. S. District Court.—Filed June 25, 1904.—S. D. of N. Y.

3957

3958 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Room in the Post Office Building, Borough of Manhattan, City of New York, this thirtieth day of June, 1904.

Present—Hon. EDWARD B. THOMAS,
District Judge.

IN THE MATTER

3959 OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability.

The Exceptions to the Commissioner's report herein having come on for argument, and having been argued by counsel for the respective parties, and due deliberation being had, it is now

3960 Ordered that all exceptions to said Report be overruled and that the said Report be and it is hereby confirmed.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Order confirming Commissioner's Report U. S. District Court.—Filed July 19, 1904. —S. D. of N. Y.

UNITED STATES DISTRICT COURT, 3961

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of the COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability. 3962

The Respondent the S. S. White Dental Co. hereby excepts to the order made in this proceeding on the 30th day of June, 1904, overruling the exceptions to the Commissioner's Report herein so far as said order overruled the exception to said Report filed on behalf of the S. S. White Dental Co.

July 12th, 1904.

BENEDICT & BENEDICT,
Proctors for the S. S. White Dental Co.

3963

(Endorsed)—Notice on behalf of S. S. White Dental Company of Exceptions to order of June 30th, 1904.—U. S. District Court.—Filed July 12, 1904.—S. D. of N. Y.

3964 At a Stated Term of the District Court of the United States for the Southern District of New York, held at the Court Room in the Post Office Building, Borough of Manhattan, City of New York, this 11th day of July, 1904.

Present—Hon. EDWARD B. THOMAS,
District Judge.

IN THE MATTER
OF
3965 The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability.

This cause having come on for hearing before Hon. W. K. Townsend and the said Judge having on the 22d day of March, 1902, made an interlocutory decree herein, and the reference ordered by said interlocutory decree having been had, and the report on said reference having been filed on the 9th day
3966 of May, 1904, and exceptions thereto having been filed on behalf of the Petitioner and of The S. S. White Dental Company, one of the respondents, and this Court having on the 30th day of June, 1904, made an order overruling all said exceptions and confirming the said Report, and due deliberation having been had, it is now

Ordered, adjudged and decreed that the steamer *La Bourgogne* in the Petition mentioned, was in fault and to blame in reference to the collision in question, in that she was proceeding at an immoderate rate of speed in a fog, contrary to law, and that the Petitioner, The Compagnie Generale Trans-

atlantique, is liable for the damages caused by the 3967
said collision to each of the claimants whose claims have been reported upon by the report above referred to as confirmed in the amounts so reported; and that the Petitioner is liable to the several claimants as follows:

To Pauline Henuy, for Two thousand eight hundred and two Dollars, with interest from July 4, 1898, to the date of this decree, amounting in all to the sum of Three thousand eight hundred and ten 72/100 Dollars;

To Henry Hyer Knowles, administrator of Gertrude Lalla Rookh Knowles, for Two thousand Dollars, with interest from July 4th, 1898, to the date 3968
of this decree, amounting in all to the sum of Twenty-seven hundred and twenty Dollars;

To William C. Perry, as administrator of Kate M. Perry, for the sum of Five thousand two hundred and seventy-seven 50/100 Dollars, with interest from the 4th of July, 1898, to the date of this decree, amounting in all to the sum of Seven thousand one hundred and seventy-seven 40/100 Dollars;

To William C. Perry, as administrator of Florence Perry, for the sum of One thousand and fifty Dollars, with interest from the 4th of July, 1898, to the date of this decree, amounting in all to One 3969
thousand four hundred and twenty-eight Dollars;

To William C. Perry, as administrator of Sadie Perry, for the sum of One thousand and fifty Dollars, with interest from the 4th of July, 1898, amounting in all to the sum of One thousand four hundred and twenty-eight Dollars;

To John Perry, as next of kin of Katherine Perry and Albert Perry, for the sum of Three hundred and fifty Dollars, with interest from July 4th, 1898, amounting in all to Four hundred and seventy-six Dollars;

To Lewis Delfonti, for the sum of Four hundred

and thirty-two Dollars, with interest from July 4th, 1898, to the date of this decree, amounting to Six hundred and seven 52/100 Dollars;

To Henry Cirri, for the sum of One thousand and eighteen Dollars, with interest from July 4th, 1898, to the date of this decree, amounting in all to One thousand three hundred and eighty-four 48/100 Dollars;

To George Deslions, for Twenty-five thousand Dollars, with interest from July 4th, 1898, to the date of this decree, amounting in all to Thirty-three thousand nine hundred and eighty Dollars;

And it is further

Ordered, adjudged and decreed that the claim of the S. S. White Dental Company be disallowed, and that all the claims which have been filed in this proceeding on behalf of persons claiming damages for negligence resulting in loss of life caused by said collision be, and the same are hereby disallowed and excluded from the consideration of the Commissioner in this proceeding; and it is further

Ordered and decreed that the petitioner is entitled to limit its liability for such damages as are decreed as aforesaid, to the amount of the value of the said steamer and her freight for the voyage, and that there is not to be included as going to make up said amount either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved between the petitioner and said Government for the voyage on which the *Bourgogne* was lost; and it is further

Ordered, adjudged and decreed that the costs in this action be divided as follows, viz.: All the costs which have been incurred in the determination of the question whether the plaintiff was in fault and

liable for said collision, and the amount thereof are 3973
to be given to the respondents herein, and all the costs which have been incurred in the determination of the question whether the Petitioner is entitled to a limitation of such liability, are awarded to the Petitioner, payable primarily out of any fund herein that is or may come into the hands of the Trustee, and the Clerk of the Court is hereby directed to tax said costs as above, and to offset the one amount against the other, and an order may be made on the foot of this decree, directing the payment of the amount of costs above said offset to the party who shall be found entitled thereto. And it is further

Ordered, adjudged and decreed that on payment 3974
by the Petitioner to each of the parties having appeared herein who commenced any proceeding against the Petitioner to recover any damage caused by said collision, which proceeding was stayed by the issuing of the temporary injunction issued herein, of the costs of such proceeding, the said parties, and each of them, shall be perpetually enjoined from any farther prosecution of such proceeding. And it is also

Ordered, adjudged and decreed that all other parties be and they are hereby permanently enjoined from taking any proceeding at law or otherwise for the purpose of enforcing against the Petitioner 3975
any claim for damages arising out of the collision of the steamer *La Bourgogne* in this proceeding mentioned.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Final decree.—This decree substantially follows the practice of both the Eastern and Southern Districts of New York as regards the question of an interlocutory judgment and is in other respects deemed correct.—E. B. T., U. S. J.

3976 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for limitation of liability and other relief.

3977

SIRS:

Please take notice that the claimants and respondents named below hereby appeal to the United States Circuit Court of Appeals for the Second Circuit from the final decree of this Court entered in this proceeding on the 11th day of July, 1904, in so far as said decree orders, adjudges and decrees as follows:

3978 (1). That all claims for damages for negligence resulting in loss of life be disallowed and excluded from the consideration of the Commissioner in this proceeding;

(2). That the claim of the S. S. White Dental Company be disallowed;

(3). That the petitioner is entitled to limit its liability as specified in said decree;

(4). That there is not to be included in the amount to which the liability of the petitioner is

limited either the freight or passage money received 3979
by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved between the petitioner and said Government for the voyage on which the *Bourgogne* was lost;

(5.) That the costs of the proceeding be divided;

(6). That all persons who commenced any proceeding against the Petitioner to recover any dam- 3980
age caused by said collision be perpetually enjoined from any farther prosecution of such proceeding, as specified in said decree;

(7). That all other parties be permanently enjoined as in said decree provided.

Dated New York, July 20, 1904.

BENEDICT & BENEDICT,
Proctors for George Deslions and S. S. White Dental Company.

A. GORDON MURRAY,
Proctors for Pauline Henuy, Administratrix, etc., William C. 3981
Perry, as administrator, etc., and John Perry, as next of kin, etc.

ALEXANDER & COLBY,
Proctors for Henry Hyer Knowles, Administrator, etc.

BULLOWA & BULLOWA,
Proctors for Louis Delfonti and Henri Cirri.

1332

3982 To E. K. JONES, Esq.,
Proctor for Petitioner.
THOMAS ALEXANDER, Esq.,
Clerk, etc., and to
WILLIAM H. BUTTON; HAROLD BINNEY; HASTINGS AND GLEASON; KENNESON, CRAIN, EMLEY & RUBINO; G. J. WIEDERHOLD; MORRIS PUTNAM STEVENS; FRANK L. ECKERSON; TOWNSEND & MANN; JUDSON G. WELLS; GEORGE SANDERS AND E. W. POWERS, WILLIAM R. PAGE; WILBUR AND LUDLOW;
3983 G. T. GOLDTHWAITE; HARRISON, SEASONGOOD & EDWARDS; E. A. O'SULLIVAN.
Proctors for various claimants.

And all others who might have an interest on this appeal.

Service of a copy admitted July 21, 1904.

(Endorsed)—Notice of appeal.—Filed July 21, 1904.

3984

UNITED STATES DISTRICT COURT, 3985

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship "LA BOURGOGNE," for limitation of liability and other relief.

3986

The appellants herein assign as error on the appeal herein as follows:

FIRST.—The Court below erred in granting the prayer of the petitioner for a limitation of its liability.

SECOND.—The Court below erred in holding that the collision mentioned in the petition occurred without the knowledge and the privity of the owner.

THIRD.—That the Court below erred in holding and deciding that the Petitioner herein was not 3987
chargeable with knowledge of and consequent privity in the fault which caused the collision with which this case is concerned, in that said Petitioner knew that its ships were habitually and continually run at illegal speed in fog, and that the master of *La Bourgogne* ran said *La Bourgogne* at such illegal speed, and that said Petitioner had not in force at the time of the disaster any sufficient regulations, such as would ensure the proper, safe and legal navigation of said *La Bourgogne* in case of fog.

3988 FOURTH.—The Court below erred in holding and deciding that the Petitioner was entitled to a limitation of its liability under the statute in such cases made and provided, whereas the disaster in question did not occur without the privity or knowledge of the petitioner, because the steamer *La Bourgogne* was not provided with lifeboats and life rafts, as required by law, was not properly manned and equipped, as required by law, was not seaworthy, and was being navigated contrary to law with the privity or knowledge of the petitioner.

FIFTH.—The Court below erred in that it did not hold that the Petitioner was not entitled to a limita-
3989 tion of its liability.

SIXTH.—The Court below erred in holding that the Petitioner has duly transferred and surrendered its interest in the Steamship *La Bourgogne* and her freight by the transfer made to the Trustee appointed in this cause.

SEVENTH.—The Court below erred in holding that the amount or value of the Petitioner's interest in the Steamship *La Bourgogne* and her pending freight extends no farther than the value of the lifeboat and life raft mentioned in the petition.

EIGHTH.—The Court below erred in holding and
3990 deciding that there is not to be included as going to make up the amount or value of the interest of the Petitioner in the Steamship *La Bourgogne* and her freight for the voyage either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre, during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved between the petitioner and said Government for the voyage on which the *Bourgogne* was lost.

NINTH.—The Court below erred in that it did not 3991
hold that the amount of the freight money and passage money of said steamship received in New York for the passage from New York to Havre was a part of the pending freight of said steamer for the voyage, and should have been transferred to the Trustee appointed herein, and must be now transferred.

TENTH.—The Court below erred in that it did not hold that the freight and passage money of the said steamer received in Havre for the passage from Havre to New York was a part of the pending freight of said steamer for the voyage, and should have been transferred to the Trustee appointed herein, and must be now transferred. 3992

ELEVENTH.—The Court below erred in that it did not hold that the voyage of the said steamer for which the freight must be surrendered consisted of the two passages, one from Havre to New York, and one from New York to Havre.

TWELFTH.—The Court below erred in that it did not hold that the amount paid to the Petitioner by the Government of France for that voyage, viz., the one-fifty-second part of the sum paid by said Government for the fifty-two voyages provided for by the contract between the Petitioner and the Government of France was also a part of the freight for 3993
the voyage of said steamer, and should have been transferred to the Trustee appointed herein, and must now be transferred to him.

THIRTEENTH.—The Court below erred in enjoining pending suits at law for damages for negligence resulting in loss of life caused by the collision mentioned in the petition, and in which there were competent Common Law remedies, and decreeing that all claims for such loss of life, filed herein pursuant to the monition herein, be disallowed and excluded from consideration in this proceeding.

3994 FOURTEENTH.—The Court below erred in not holding the petitioner personally liable for its failure or neglect to make any proper regulations or enforce any requirement as to what course the Steamship *La Bourgogne* should pursue, and consequently permitting the said Steamship to be off the course adopted by the principal steamship companies, and designated on the United States pilot charts current at the time of the collision, mentioned in the petition.

FIFTEENTH.—The Court below erred in holding that the claim of the S. S. White Dental Company
3995 must be disallowed, and that it overruled the exception to the Report of the Commissioner on behalf of said S. S. White Dental Company.

New York, July 20th, 1904.

BENEDICT & BENEDICT,
Proctors for George Deslions and S. S. White Dental Company.
A. GORDON MURRAY,
Proctors for Pauline Henuy, Administratrix, &c., William C. Perry, as Administrator, &c., and John Perry, as next of kin,
3996 &c.
ALEXANDER & COLBY,
Proctors for Henry Hyer Knowles, as Administrator, &c.
BULLOWA & BULLOWA,
Proctors for Louis Delfonti & Henry Cirri.

(Endorsed)—Assignments of Error.—Filed July 21, 1904.—Service of a copy admitted July 21, 1904.—Edward K. Jones.

UNITED STATES DISTRICT COURT, 3997

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for limitation of liability and other relief. 3998

TO THE JUDGES OF THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT:

The petition of the appellants herein, named below, by their respective proctors, respectfully shows to the Court:

That on or about the 15th day of May, 1900, the petitioner herein duly filed a libel and petition in the United States District Court for the Southern 3999
District of New York, praying that for the reasons set forth in the said libel and petition a decree might be entered in its favor, limiting its liability in respect to the matters set forth in said petition, and against all persons having claims against said steamship *La Bourgogne* or her owners, the petitioner herein, that the said petitioner might be allowed to contest its liability as provided for by law.

That thereafter your petitioners having been duly cited and enjoined from taking any other proceed-

4000 ing except herein, duly appeared in said suit, and on or about the 21st day of August, 1900, duly filed their claims herein, and on or about the 31st day of August, 1900, duly filed their respective answers praying that the said libel and petition should be dismissed, denying the allegations of said petition as to the non-liability of the Company for the collision mentioned in the said petition, and denying that the said collision happened without the knowledge and privity of said petitioner, and further denying that the said petitioner had made a transfer of its interest in the vessel and her freight, as required by the statute in such case made and pro-
4001 vided, and praying that the prayer of the petition for the limitation of liability should be denied, and that a decree be entered awarding the damages to which each of said claimants and respondents might be entitled.

That thereafter, and on or about the 11th day of October, 1901, the said cause came on to be tried upon the issues joined as aforesaid, before the Honorable William K. Townsend, one of the Judges of this court, and such proceedings were thereupon had that on or about the 22d day of March, 1902, said Judge pronounced in favor of petitioner, and caused to be entered an interlocutory decree on the 1st day of April, 1902, granting the prayer of the
4002 petition in so far as it decreed that the said petitioner was entitled to a limitation of its liability, by decreeing that the said steamship *La Bourgogne* was in fault for excessive speed in fog, and granting the various respondents such damages as they might be able to prove before the Commissioner named in said decree before United States Commissioner Thomas Alexander, named in said decree, except that the said decree excluded from the consideration of said Commissioner all the claims for

damages for negligence causing and resulting in 4003
loss of life.

That thereafter such proceedings were had before said Commissioner, wherein certain claimants duly proved their claims, and the said Commissioner having made his report finding in favor of the said claimants, as more fully appears by the said report of said Commissioner duly filed herein, and exceptions having been filed to the said report, and the said exceptions coming on to be heard before the Honorable Edward B. Thomas, one of the Judges of this Court, and said exceptions having been overruled, and the report of the Commissioner confirmed, such proceedings were had that on the 11th 4004
day of July, 1904, a final decree in this cause was duly entered, Ordering, Adjudging and Decreeing, among other things, that the claimants were entitled to their claims as proved, and that the petitioner was entitled to a limitation of its liability, and that the petitioner had duly transferred its interest in said ship and freight to the Trustee heretofore appointed herein, and for costs to be taxed and entered upon the foot of the decree.

That your petitioners are advised and insist that the said final decree is erroneous, inasmuch as it orders, adjudges and decrees:

(1) That all claims for damages for negligence 4005
resulting in loss of life be disallowed and excluded from the consideration of the Commissioner in this proceeding;

(2) That the claim of the S. S. White Dental Company be disallowed;

(3) That the petitioner is entitled to limit its liability as specified in said decree;

4006 (4) That there is not to be included in the amount to which the liability of the petitioner is limited either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the contract proved between the petitioner and said Government for the voyage on which *La Bourgogne* was lost;

(5) That the costs of the proceeding be divided;

4007

(6) That all persons who commenced any proceeding against the petitioner to recover any damages caused by said collision be perpetually enjoined from any farther prosecution of such proceeding, as specified in said decree; and

(7) That all other parties be permanently enjoined as in said decree provided.

For these reasons your petitioners appeal from the said final decree to the United States Circuit Court of Appeals for the Second Circuit, and have
4008 duly filed herewith a certain assignment of error; and upon the coming on of said appeal to be heard, intend to seek a new decision upon the law and facts raised by said appeal upon the pleadings and proof of the court below, and to that end pray that the records and proceedings of said court below may be forthwith returned to the United States Circuit Court of Appeals for the Second Circuit, and that the said decree may be reversed in so far as the said decree is objectionable to the appellants herein,

with all the costs in the District Court and this 4009
Court to your petitioners.

Dated New York, July 21, 1904.

BENEDICT & BENEDICT,
Proctors for George Deslions and
S. S. White Dental Company.
A. GORDON MURRAY, A. G. M.
By B. & B.
Proctor for Pauline Henuy, Administratrix, &c., William C. Perry, Administrator, &c., and John Perry, as next of kin, &c.
ALEXANDER & COLBY, 4010
By B. & B.
Proctors for Henry Heyer Knowles, Administrator of Gertrude Lalla Rookh Knowles.
BULLOWA & BULLOWA,
By B. & B.
Proctors for Lewis Delfinto and Henri Cirri.

The above appeal is hereby allowed.

EDWARD B. THOMAS,
United States Judge.

(Endorsed)—Petition on Appeal.—Filed July 21, 4011
1904.—Service of a copy admitted July 21, '04.
—Edward K. Jones.

4012 UNITED STATES CIRCUIT COURT OF APPEALS

FOR THE SECOND CIRCUIT.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability and other relief.

4013

United States of America, ss.:

By the Honorable EDWARD B. THOMAS, one of the Judges of the United States District Court:

To LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the Steamship *La Bourgogne*, petitioner herein, and all others who might have an interest on this appeal:

4014 WHEREAS, the claimants and respondents herein have lately applied to the United States Circuit Court of Appeals for the Second Circuit from a decree lately rendered by the District Court of the United States for the Southern District of New York, Ordering, Adjudging and Decreeing that the said claimants are entitled to the respective amounts named in the said decree, and that the petitioner herein is entitled to a limitation of its liability under the statute in such cases made and provided, and have filed the security required by law;

THEREFORE, you are hereby cited to appear before 4015
the United States Circuit Court of Appeals for the Second Circuit, at the term of said court to be held at the City of New York on or before the 28th day of August, 1904, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the City of New York on the 30th day of July, in the year one thousand nine hundred and four, and of the independence of the United States the one hundred and twenty-ninth.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Citation.—U. S. District Court.— 4016
Filed Aug. 1, 1904.—S. D. of N. Y.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER
OF
The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for limitation of liability and other relief. 4017

SIRS:

Please take notice that the claimant and respondent named below, hereby appeals to the United

4018 States Circuit Court of Appeals for the Second Circuit, and joins in the appeal heretofore taken by the claimants and respondents George Deslions, S. S. White Dental Company, Pauline Henuy, administratrix, etc., William C. Perry as administrator, etc., John Perry as next of kin, etc., Henry Hyer Knowles, administrator, etc., Louis Delfonti and Henri Cirri, from a final decree entered in this proceeding on the 11th day of July, 1904, in so far as said decree orders, adjudges and decrees as follows:

1. That all claims for damages for negligence resulting in loss of life be disallowed and excluded
4019 from the consideration of the Commissioner in this proceeding;

2. That the petitioner is entitled to limit the liability as specified in said decree;

3. That there is not to be included in the amount to which the liability of the petitioner is limited either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France under the
4020 contract proved between the petitioner and said Government for the voyage on which the *Bourgogne* was lost;

4. That the costs of the proceeding be divided;

5. That all persons who commenced any proceeding against the Petitioner to recover any damage caused by said collision be perpetually enjoined from any farther prosecution of such proceeding, as specified in said decree;

6. That all other parties be permanently enjoined 4021
as in said decree provided.

Dated New York, August 4th, 1904.

JUDSON G. WELLS,
Proctor for Josephine Chanut,
Executrix, etc.

To E. K. JONES, Esq.,
Proctor for Petitioner.
THOMAS ALEXANDER, Esq.,
Clerk, &c., and to
BENEDICT & BENEDICT; A. GORDON MURRAY; ALEXANDER & COLLY; BULLOWA & BULLOWA; WILLIAM H. BUTTON; HAROLD BINNEY; 4022
HASTINGS & GLEASON; KENNESON, CRAIN, EMLEY & RUBINO; G. J. WIEDERHOLD; MORRIS PUTNAM STEVENS; FRANK L. ECKERSON; TOWNSEND & MANN; GEORGE SANDERS and E. W. POWERS, WILLIAM R. PAGE; WILBUR & LUDLOW; G. T. GOLDTHWAITE; HARRISON, SEASONGOOD & EDWARDS; E. A. O'SULLIVAN,
Proctors for various claimants.
And all others who might have an interest on this appeal. 4023

(Endorsed)—Notice of Appeal.—(Proofs of service are attached.)—Filed Aug. 20, 1904.

4024 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "LA BOURGOGNE," for limitation of liability.

4025 SIRS:

Please take notice that the claimant and respondent named below hereby appeals to the United States Circuit Court of Appeals for the Second Circuit from the final decree of this Court entered in this proceeding on the 11th day of July, 1904, in so far as said decree orders, adjudges and decrees as follows:

(1) That all claims for damages for negligence resulting in the loss of life be disallowed and excluded from the consideration of the Commissioner in this proceeding;

4026 (2) That the claim of the S. S. White Dental Company be disallowed;

(3) That the petitioner is entitled to limit its liability as specified in said decree;

(4) That there is not to be included in the amount to which the liability of the petitioner is limited either the freight or passage money received by the petitioner for the trip of said steamer *La Bourgogne* from Havre to New York, or for the trip from New York to Havre during which voyage said collision occurred, or the amount of the money paid to the petitioner by the Government of France un-

der the contract proved between the petitioner and 4027
said Government for the voyage on which the *Bourgogne* was lost;

(5) That the costs of the proceeding be divided;

(6) That all persons who commenced any proceeding against the petitioner to recover any damage caused by said collision be perpetually enjoined from any farther prosecution of such proceeding, as specified in said decree;

(7) That all other parties be permanently enjoined as in said decree provided.

Dated New York, July 20, 1904.

Proctor for Arthur E. White, as 4028
Executor of Joseph H. Durkee, deceased.

To E. K. JONES, Esq.,
Proctor for Petitioner.
THOMAS ALEXANDER, Esq.,
Clerk, &c., and to
BENEDICT & BENEDICT; A. GORDON MURRAY; ALEXANDER & COLBY, BULLOWA & BULLOWA; WILLIAM H. BUTTON; HAROLD BINNEY; HASTINGS & GLEASON; KENNESON, CRAIN, EMLEY & RUBINO; G. J. WIEDERHOLD; MORRIS PUTNAM STEVENS; FRANK L. ECKERSON; 4029
TOWNSEND & MANN; JUDSON G. WELLS; GEORGE SANDERS and E. W. POWERS; WILBUR & LUDLOW; G. T. GOLDTHWAITE; HARRISON, SEASONGOOD & EDWARDS; E. A. O'SULLIVAN,
Proctors for various claimants.
And all others who might have an interest on this appeal.

(Endorsed)—Notice of Appeal.—Filed Aug. 9, 1904.

4030 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for limitation of liability.

4031

Southern District of New York, ss.:

EDWARD G. BENEDICT, one of the Proctors of the claimant Deslions, and others, in this matter, being duly sworn, says that an appeal has been taken herein from the final decree in this Court to the United States Circuit Court of Appeals for the Second Circuit, and said appeal has been duly perfected. The time in which to file the Record in the Appellate Court will expire on the 20th inst. The Record is very voluminous and complicated, and it may become necessary for this Court to pass upon the same before it can be filed. Owing to the ab-
4032 sence from the City of various proctors in the case, it has been found impossible to get the same properly prepared and filed, and deponent therefore asks, on behalf of those he represents and all others who have appealed, that the time to file the record be extended for thirty days.

Sworn to before me this 15th day of August, 1904.

(Signed) E. G. BENEDICT.

(Signed) WM. D. JONES,
U. S. Com'r.,
S. D. of N. Y.

[SEAL.]

On the proceedings in this matter, and the fore- 4033
going affidavit, it is

Ordered that the time to file the record on appeal in this case be extended thirty days from the twenieth day of August, 1904.

Dated August 17th, 1904.

EDWARD B. THOMAS,
U. S. J.

(Endorsed)—Affidavit and Order extending time to file record on appeal.—Filed: Aug. 17, 1904.

At a Stated Term of the District Court of the United States for the Southern 4034
District of New York, held at the Court Rooms in the Federal Building, City of New York and Borough of Manhattan, this 17th day of September, 1904.

Present—Hon. GEORGE C. HOLT, *District Judge.*

IN THE MATTER
OF
The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability. 4035

On the annexed affidavit of Edward G. Benedict, and on all the pleadings and proceedings herein, let the time of the appellants to return the record on appeal in the above-entitled case to the Circuit Court of Appeals be extended for thirty days from the 19th day of September, 1904.

GEO. C. HOLT, *J.*

4036 UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The Petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, owner of the S. S. "BOURGOGNE," for Limitation of Liability.

4037

Southern District of New York, ss.:

EDWARD G. BENEDICT, being duly sworn, says that he is one of the proctors for George Deslions, and others, claimants herein; that the time under the rule to return the record on appeal in this case to the Circuit Court of Appeals expires on the 19th day of September, 1904; that the said record is voluminous, and, although deponent's firm and the Clerk of this court have been actually engaged in making up the record, they are not, and will not be able to have it ready for filing by the said 19th day of September. Deponent therefore asks the Court
4038 to extend the time within which the appellants may return the said case on appeal to the Circuit Court of Appeals, for thirty days from the 19th day of September.

(Signed) E. G. BENEDICT.

Sworn to before me this 16th day of September, 1904.

(Signed) WM. D. JONES,
[SEAL.] U. S. Com'r
S. D. of N. Y.

(Endorsed)—Affidavit and Order extending time to return case on appeal.—Filed: Sep. 19, 1904.

UNITED STATES OF AMERICA, 4039

SOUTHERN DISTRICT OF NEW YORK.

IN THE MATTER

OF

The petition of LA COMPAGNIE GENERALE TRANSATLANTIQUE, as owner of the Steamship "LA BOURGOGNE," for limitationer of liability, 4040
Petitioner-Appellee,

GEORGE DESLIONS, W. C. PERRY, as administrator; PAULINE HENUY, as administratrix; HENRY HYER KNOWLES, as administrator; LOUIS DELFONTI, HENRY CIRRI and JOSEPHINE CHANUT,
Claimants-Appellants.

I, THOMAS ALEXANDER, Clerk of the District 4041
Court of the United States of America for the Southern District of New York, do hereby certify that the foregoing is a correct transcript of the record of the District Court in the above-entitled cause made up pursuant to Rule No. 4 in Admiralty of the United States Circuit Court of Appeals, for the Second Circuit.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the City of New York, in the Southern District of New York,

4042 this 12th day of October, in the year of our Lord one thousand nine hundred and four and of the Independence of the said United States the one hundred and twenty-ninth.

THOS. ALEXANDER,
Clerk.

[SEAL.]